

Professor Elisabeth Semel,
Whitewashing the Jury Box

WHITEWASHING THE JURY BOX

How California Perpetuates the Discriminatory
Exclusion of Black and Latinx Jurors



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Founded in 2001, the Berkeley Law Death Penalty Clinic seeks justice for individuals facing the death penalty by providing them with high-quality representation; offers students a rich opportunity for meaningful hands-on experience in high-stakes, complex litigation; and exposes problems endemic to the administration of capital punishment. More information about the clinic is available at <https://www.law.berkeley.edu/experiential/clinics/death-penalty-clinic>.

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Thousands of California citizens have been denied the right to serve on juries because of their race or ethnicity, and thousands of California criminal defendants have been tried by juries from which those citizens were excluded. The authors hope this report will serve as a catalyst for reform that results in vigorous enforcement of the constitutional rights of those whose lives depend upon a fair and equitable jury selection system and of those who are eligible to serve on juries. In this regard, the authors thank Assemblymember Dr. Shirley K. Weber (Dist. 79) for her leadership in introducing Assembly Bill 3070, which offers California the opportunity to eliminate discriminatory peremptory challenges.

Cover illustration by Davide Bonazzi

EXECUTIVE SUMMARY, FINDINGS, AND RECOMMENDATIONS

Racial discrimination is an ever-present feature of jury selection in California. This report investigates the history, legacy, and continuing practice of excluding people of color, especially African Americans, from California juries through the exercise of peremptory challenges. Unlike challenges for cause, each party in a trial has the right to excuse a specific number of jurors without stating a reason and without the court's approval. In California, peremptory challenges are defined by statute.

Historically, the main vice of peremptory challenges was that prosecutors wielded them with impunity to remove African Americans from jury service. These strikes were part and parcel of the systematic exclusion of Blacks from civil society. **We found that prosecutors continue to exercise peremptory challenges to remove African Americans and Latinx people from California juries for reasons that are explicitly or implicitly related to racial stereotypes.**

In 1978, in *People v. Wheeler*, our state supreme court was the first court in the nation to adopt a three-step procedure intended to reduce prosecutors' discriminatory use of peremptory challenges. Almost a decade later, in *Batson v. Kentucky*, the United States Supreme Court approved a similar approach with the goal of ending race-based strikes against African-American prospective jurors. An essential feature of the "*Batson/Wheeler* procedure" is that it only provides a remedy for *intentional* discrimination. Thus, at step one, the objecting party must establish a sufficient showing—known as a "prima facie case"—of purposeful discrimination. At step two, if the trial court agrees that the objecting party has made such a showing, the burden of producing evidence shifts to the striking party to give a "race-neutral" reason. At step three, the trial court decides whether the objecting party has established purposeful discrimination. If the court finds that the striking party's reason was credible, it denies the *Batson* objection.

In his concurring opinion in *Batson*, Justice Thurgood Marshall warned that *Batson's* three-step procedure would fail to end racially discriminatory peremptory strikes. He anticipated that prosecutors would easily be able to produce "race-neutral" reasons at *Batson's* second step, and that judges would be ill-equipped to second-guess those reasons. Further, Justice Marshall doubted *Batson's* efficacy because the procedure did nothing to curb strikes motivated by unconscious racism—known more often today as implicit bias.

Justice Marshall was prescient: 34 years after *Batson* was decided, prosecutors in California still disproportionately exercise peremptory challenges to exclude African Americans and Latinx people from juries.

The Berkeley Law Death Penalty Clinic explored the shortcomings of the *Batson* procedure. Our report investigates how the California Supreme Court went from a judiciary that championed the eradication of race-based strikes to a court that resists the United States Supreme Court's limited efforts to enforce *Batson*. We conclude that *Batson* is a woefully inadequate tool to end racial discrimination in jury selection.

FINDINGS

1. Many decades after *Wheeler* and *Batson* were decided, California prosecutors' use of peremptory challenges to exclude African Americans and Latinx citizens from juries is still pervasive.
2. Historically and still today, in California, the overwhelming number of *Batson* objections are brought by defense attorneys against prosecutors' peremptory challenges.
3. Empirical evidence overwhelmingly shows that implicit biases play a significant role in prosecutors' peremptory challenges. Strikes based on these biases most often adversely affect Black defendants and Black jurors. Implicit biases are, by definition, deeply held and reflexive. Inasmuch as each of us acts on them without awareness, lawyers most often will not recognize their biases, much less be able to acknowledge them. Judges are no better at identifying them. *Batson*'s requirement that the objecting party prove intentional discrimination allows these biases to operate unchecked.
4. Our empirical analysis of California appellate court opinions shows that prosecutors routinely and successfully cite a Black or Latinx prospective juror's distrust of law enforcement or the criminal legal system to justify a peremptory strike against the juror. Social science research demonstrates that most African Americans and Whites do not share the same views of law enforcement or the criminal legal system. The differences in attitude are long-standing and rooted in the nation's history of institutional racism, as well as the present-day differential treatment of Blacks and Latinx people by actors in the criminal legal system, including by members of law enforcement. More than 40 years ago, in *Wheeler*, the California Supreme Court announced that these differences do not support the exercise of peremptory challenges: "The representation on juries of these differences in juror attitudes is precisely what the representative cross-section standard . . . is designed to foster." California courts long ago lost sight of this goal.
5. District attorney training manuals on peremptory challenges encourage discriminatory strikes in at least three respects:
 - Prosecutors are trained to identify the "ideal juror" as a person who most resembles them—"attached to the community, educated, stable, [and] professional[]." They are likewise advised to avoid individuals who are members of groups in which people of color are overrepresented, that is, "less educated people and blue collar workers," and those who are "unemployed or underemployed" or who have family members experiencing similar economic hardship.

- Prosecutors are instructed to strike jurors based on their “gut reactions” to jurors’ facial expressions, body language, clothing, and hairstyle, and to rely on lengthy stock lists of court-approved “race-neutral” reasons to explain their challenges. Social science has repeatedly shown that “gut reactions” are often the product of implicit biases that correlate with racial and ethnic stereotypes.
 - Prosecutors are trained to strike prospective jurors who have had or whose relatives have had a negative experience with law enforcement or are distrustful of the criminal legal system. They are, in other words, instructed to exploit the historic and present-day differential treatment of Whites and people of color, especially African Americans and Latinx people, by the police, prosecutors, and the courts.
6. The California Supreme Court’s definition of a “race-neutral” reason is so expansive that any explanation short of the admission of a discriminatory motive will suffice at *Batson*’s second step, and, ultimately, defeat a *Batson* challenge. This also allows prosecutors to rely successfully on a laundry list of judicially approved “race-neutral” reasons when they explain their peremptory challenges. Courts have consistently upheld reasons such as a juror’s prior arrest, a juror’s loved one’s incarceration, or a juror’s distrust of the criminal legal system as facially race-neutral and, overwhelmingly, sufficient to defeat a *Batson* objection.
 7. We evaluated nearly 700 cases decided by the California Courts of Appeal from 2006 through 2018, which involved objections to prosecutors’ peremptory challenges. In nearly 72% of these cases, district attorneys used their strikes to remove Black jurors. They struck Latinx jurors in about 28% of the cases, Asian-American jurors in less than 3.5% of the cases, and White jurors in only 0.5% of the cases.
 - Prosecutors most often gave demeanor-based justifications for their strikes. The next most common reason related to a prospective juror’s relationship with someone who had been involved in the criminal legal system. This was followed almost as frequently by a prospective juror expressing a distrust of law enforcement or the criminal legal system or a belief that law enforcement or the criminal legal system is racially- and/or class-biased.
 - Prosecutors in these cases successfully used their peremptory challenges against African Americans because they had dreadlocks, were slouching, wore a short skirt and “blinged out” sandals, visited family members who were incarcerated, had negative experiences with law enforcement (often many years before they were called for jury duty), or lived in East Oakland, Los Angeles County’s Compton, or San Francisco’s Tenderloin.
 - Prosecutors also successfully struck Latinx prospective jurors for frowning, seeming confused, wearing large earrings, stating that a loved one had been wrongfully accused of a crime, expressing a belief that the criminal legal system treats people differently

based on their race, or being “kicked off a ladder by a border patrol officer who was chasing” undocumented people three decades earlier.

8. Between 2003 and 2019, the United States Supreme Court issued a series of decisions that signaled the need for lower courts to more rigorously enforce *Batson*. The California Supreme Court has largely disregarded those directives. Here are three examples:
 - For years, at step one of the process, the California Supreme Court required the objecting party to show that it was more likely than not that the strike was based on intentional discrimination. Unless the standard was satisfied, the striking party did not have to give reasons for the peremptory challenge. In 2005, in *Johnson v. California*, the United States Supreme Court rejected California’s test as unduly burdensome and inconsistent with *Batson*’s rule that step one is a low threshold; the objecting party need only raise an inference of discrimination. Despite the United States Supreme Court’s intervention, in the 42 step-one cases the state supreme court has since decided, the court has not once found *Batson* error.
 - The United States Supreme Court has left no doubt that *Batson* requires the *attorney* to provide the reasons for the strikes, and that the trial judge and reviewing courts must base their rulings on the reasons the attorney offers. However, the California Supreme Court has consistently approved speculation by trial and appellate courts about reasons the prosecution could have (but did not) offer for its strikes in order to uphold the denial of a *Batson* objection.
 - Since 2003, the United States Supreme Court has decisively endorsed a method of analyzing a *Batson* objection known as “comparative juror analysis,” an approach central to each of its subsequent favorable *Batson* decisions. In over 30 years, the California Supreme Court has never used this analysis to expose discrimination. Rather, in case after case, the state supreme court has declined to engage in comparative analysis, restricted its application, or conducted the analysis but found it unpersuasive. The court’s resistance to this powerful analytic tool also explains its extraordinarily high affirmance rate.
9. California courts—the California Supreme Court and Courts of Appeal—have an abysmal record in *Batson* cases. In the last 30 years, the California Supreme Court has reviewed 142 cases involving *Batson* claims and found a *Batson* violation only three times (2.1%).
10. It has been more than 30 years since the California Supreme Court found a *Batson* violation involving the peremptory challenge of an African-American prospective juror.
11. It has been more than 30 years since the California Supreme Court found that a trial court committed error in denying a defendant’s objection to the prosecutor’s use of peremptory challenges at the first step of the *Batson* procedure.

12. California Courts of Appeal, which follow the state supreme court's precedent, rarely find error when trial courts deny defense attorneys' *Batson* motions challenging the removal of Black and Latinx jurors. From 2006 through 2018, our appellate courts found error in just 18 out of 683 decisions (2.6%).
13. In our examination of California state cases between 1993 and 2019, which were later reviewed by the Ninth Circuit Court of Appeals in habeas corpus proceedings, the Ninth Circuit granted *Batson* relief 15% of the time—almost six times more often than the California Courts of Appeal and over seven times more frequently than the California Supreme Court. This is particularly noteworthy because the Ninth Circuit, applying federal law, is obliged to use a much stricter standard of review than that employed by our state courts.
14. In two opinions in 2019, California Supreme Court and Court of Appeal justices urged immediate, decisive action to remedy *Batson*'s failure in California. In the words of Supreme Court Justice Goodwin Liu, it is “past time for course correction.” Justice Liu has repeatedly dissented from the majority in *Batson* cases since joining the court in 2011. He has criticized the court's persistent failure to apply *Batson*'s precedents with the “vigilance required by the constitutional guarantee of equal protection of the law.” Justice Jim Humes, a member of the California Court of Appeal, similarly urged that “the time has come” for the state “to consider meaningful measures to reduce actual and perceived bias in jury selection.” In May 2020, in another dissenting opinion, Justice Liu declared that the “*Batson* framework, as applied by this court, must be rethought in order to fulfill the constitutional mandate of eliminating racial discrimination in jury selection.”
15. Across the country, members of the state and federal bench—including United States Supreme Court Justice Stephen Breyer—legal scholars, and some state supreme courts have acknowledged *Batson*'s failure as a mechanism for eliminating discriminatory peremptory challenges, and have called for or implemented reform. In 2018, the Washington Supreme Court took a leadership role when the court adopted General Rule 37 to reform *Batson*.
16. We acknowledge the California Supreme Court's interest in studying *Batson*'s shortcomings by announcing the formation of a “work group” in January. There has been no subsequent statement regarding the goals of the work group or its membership. Over the last three decades, the court has declined many opportunities to remedy these inequities. The legislature—through the passage of AB 3070—is better suited to effectively address persistent discrimination in jury selection in a timely manner. As this report makes evident, the topics identified for study by the “work group” have been amply studied. The questions posed have been answered. The time for a decisive “course correction” by the California Legislature is now.

RECOMMENDATIONS

Batson has failed in part because the California Supreme Court has declined to enforce it vigorously and consistently. But more fundamentally, *Batson* has failed because its approach was flawed from the outset. Only a drastic course correction that encompasses significant changes to the *Batson* procedure can eliminate the exercise of discriminatory peremptory challenges. For purposes of our recommendations, we use the term “protected group” to refer to a prospective juror’s race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation.

We recommend the following:

1. ***Batson*’s first step should be eliminated.** If a party objects that the opposing party exercised a peremptory challenge based on discrimination against one of the protected groups, the trial court should always require the striking party to state the reason(s) for the strike. The elimination of *Batson*’s first step prevents a trial court’s own implicit bias from insulating potentially discriminatory strikes from direct judicial inquiry. This reform makes the determination of whether the peremptory challenge is legally permissible more expeditious and avoids unnecessary appellate litigation.
2. **The burden of proof should rest with the party exercising the peremptory challenge.** Under *Batson*, the burden rests with the objecting party to prove that the challenging party acted with intentional discrimination. If peremptory challenges are to continue to have a legitimate place in the jury selection process, the challenging party should bear the burden of justifying challenged strikes. This reform takes into account the significant role peremptory challenges have played and continue to play in the exclusion of African-American and Latinx citizens from juries.
3. **The trial court should be required to act with awareness of the role implicit, institutional, and unconscious bias has played in the discriminatory exclusion of jurors in California.** Making explicit that which has gone unsaid and unacknowledged is an essential feature of the proposed reforms. This change will ensure that trial courts scrutinize peremptory challenges to better root out the vestiges of historical and present-day discrimination in the jury selection process.
4. **The trial court should be required to evaluate the striking party’s reasons for the peremptory challenge in light of the totality of the circumstances.** A requirement that the trial court make its ruling in light of the totality of the circumstances pertaining to the objection retains *Batson*’s approach, which appropriately encourages careful and thorough decision-making.

5. **The court should sustain the objection if it determines that an objective observer could view race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation as a factor in the exercise of the peremptory challenge.** *Batson*'s requirement that the objecting party prove intentional discrimination has perpetuated the use of strikes based on implicit and institutional bias and the resulting disproportionate exclusion of African-American and Latinx citizens from jury service. A wholesale reform of the standard, which this recommendation endorses, is imperative. The adoption of an objective standard ensures that the court will be attentive to bias in all its forms. At the same time, it eliminates the stigma associated with a subjective finding of intentional discrimination, e.g., that the court, in making its ruling, is labeling the striking party "racist."
6. **The trial court should be required to explain its ruling on the record.** A requirement that the trial court explain its ruling on the record encourages careful and thorough decision-making, and enables appellate courts to fully and fairly evaluate the trial court's ruling.
7. **There should be a presumption that reasons historically associated with improper discrimination are invalid.** Restricting the use of reasons historically associated with improper discrimination will reduce the influence of implicit, unconscious, and institutional biases in the jury selection process.
 - a. *The following reasons should be presumptively invalid:*
 1. Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system;
 2. Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner;
 3. Having a close relationship with people who had prior contact with law enforcement or criminal legal system;
 4. A prospective juror's neighborhood;
 5. Having a child outside of marriage;
 6. Receiving state benefits;
 7. Not being a native English speaker;
 8. Having the ability to speak another language;
 9. A prospective juror's dress, attire, or personal appearance that is historically associated with a prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation;
 10. Employment in a field that is disproportionately occupied or that disproportionately serves members of a protected group;

11. The prospective juror's unemployment or underemployment or that of a prospective juror's family member;
12. Friendliness with another prospective juror who is a member of the same protected group as the prospective juror; and
13. Any other reason that applies to a seated juror who is not a member of the same group as the struck juror.

b. The following reasons are historically associated with improper discrimination. They should be presumptively invalid unless they are corroborated by the trial court or opposing counsel:

1. A party that intends to strike a juror for specified demeanor-based reasons should provide reasonable notice to the trial court and the opposing party so that all parties can verify and address the behavior. The court should find these reasons invalid if it or opposing counsel cannot corroborate them.
2. These reasons include:
 - a. Sleeping, appearing inattentive, or staring;
 - b. Failing to make eye contact;
 - c. Exhibiting a lack of rapport;
 - d. Exhibiting a problematic attitude, body language, or demeanor; and
 - e. Providing unintelligent or confused answers.

8. Courts should be prohibited from speculating or hypothesizing about the reasons the striking party offered or did not offer, and from substituting their reasons for those of the striking party. Trial and appellate courts should not speculate about or assume the existence of reasons for the challenge that the striking party did not offer. The appellate court should not offer its own reasons to explain the striking party's failure to challenge similarly situated jurors who are not members of the same protected group as the challenged juror. This prohibition requires parties and the trial court to make a complete record. Of equal importance, it prevents trial and appellate courts from substituting their explanation for a peremptory challenge for that of the striking party, and thereby shielding impermissible strikes from proper judicial scrutiny.

9. Appellate courts should review trial court rulings de novo. An appellate court should be required to review the trial court's ruling de novo, which is to say that the appellate court should do so without deferring to the trial court's ruling. However, an appellate court should be permitted to defer to the trial court's determination verifying a prospective juror's demeanor, unless clearly erroneous. This standard of review ensures that deference will not shield objectively discriminatory strikes while crediting certain factual findings that the trial court is in the best position to make.

I.

A BRIEF HISTORY OF DISCRIMINATORY EXCLUSION

African Americans have historically been, and continue to be, disproportionately excluded from juries. This exclusion, which affects both who is summoned for jury duty and who serves on the trial jury, has evolved over time, responding primarily to changes in the law that prohibit intentional racial discrimination in these processes. Prosecutors have whitewashed juries through the exercise of peremptory challenges for as long as African Americans have been eligible for jury service. The practice is still widespread today. While both the California and United States Supreme Courts sought to curb discriminatory strikes through decisions announced in 1978 and 1986, respectively, the courts' remedial mechanisms have proved ineffective. Further, the California Supreme Court has been reluctant to follow recent United States Supreme Court decisions that were meant to strengthen the procedure, further crippling this state's judicial response to racially discriminatory jury selection.

A. The Exclusion of African Americans from Juries

Prosecutors' current use of peremptory challenges to exclude African Americans from juries has its roots in the history of slavery and the wholesale exclusion of Black citizens from all aspects of civil society in many states following Reconstruction.¹ Although today African Americans have "secured a place on the jury rolls," many prosecutors continue to prevent them from serving on juries through the exercise of racially discriminatory peremptory challenges.²

After the nation abolished slavery, the federal government attempted to "guarantee the meaningful inclusion of African-Americans in the social, political and legal fabric of the United States" through the passage of the Civil Rights Act of 1866 and the Fourteenth Amendment.³ During Reconstruction, legislatures in many Southern states repealed formal race-based jury requirements.⁴ The Civil Rights Act of 1875 included a provision outlawing race-based discrimination in jury service.⁵ However, the provision was never effectively enforced.⁶

In 1879, in *Strauder v. West Virginia*, the United States Supreme Court held unconstitutional state statutes that, on their face, restricted jury service to Whites.⁷ It was, however, becoming apparent that institutional opposition to Black enfranchisement and political participation had taken hold in the South, ushering in "the Jim Crow era of white supremacy, state terrorism, and apartheid"⁸ Although laws no longer explicitly barred African Americans from jury service, in many states, "local officials achieved the same result by . . . implementing ruses to exclude black citizens."⁹ For example, some jurisdictions employed jury lists in which the names of Whites and Blacks were "printed on different color paper" or instituted "vague requirements" for jury service—"such as intelligence, experience, or good moral character"—to conceal, albeit thinly, their intention of keeping African Americans off the rolls.¹⁰ "In essence, the right not to be excluded from jury service because of one's race promised only the *possibility* of having members of one's racial group sitting on a particular jury, nothing more."¹¹

In opinion after opinion following *Strauder*, the Supreme Court placed procedural barriers between local- and state-sanctioned discrimination and federal judicial review.¹² The Court concluded either that the defendant's case was insufficient to merit federal review, or that "racist

state practices were inevitably protected by a futile search for discriminatory purpose on the part of state officials.”¹³

In 1935, in *Norris v. Alabama*, the Supreme Court finally addressed the total and systematic exclusion of African Americans from jury pools in the second trial of one of the “Scottsboro Boys.”¹⁴ Clarence Norris, one of nine Black teenagers falsely accused of raping two White women, was twice tried, convicted, and sentenced to death by an all-White jury.¹⁵ The Court agreed that the “long-continued, unvarying, and wholesale exclusion” of Blacks from the grand and petit jury venires denied him equal protection under the Fourteenth Amendment.¹⁶ The opinion “signaled a major shift: the Court would no longer tolerate the *total exclusion*, by law or by practice, of black citizens from jury rolls.”¹⁷

Following *Norris*, “state officials became more imaginative in their efforts to limit minority participation on juries,” allowing token African Americans to serve on juries to avoid total exclusion.¹⁸ Thus, the discriminatory use of peremptory challenges “immediately counteracted” the limited gains of African-American inclusion on the jury rolls.¹⁹ Some counties in California continued the wholesale exclusion of Black jurors, even if statutes prohibited the practice. For example, in *People v. Hines*, an all-White jury convicted a Black defendant of shooting and killing a Black man.²⁰ The California Supreme Court overturned Hines’s conviction because, despite constituting 8% of the population, “no negro had ever been placed on the venires or called for jury service in criminal cases in Merced county.”²¹ The court found that discrimination did not stem from the law as written, but from the “custom of the officers to exclude negroes in selecting and impaneling juries in Merced county.”²²

The United States Supreme Court also retreated from *Norris* by deferring to state court decisions and focusing on the subjective intent of local officials rather than statistical proof.²³ For example, in *Akins v. Texas*, a death-sentenced defendant challenged the racial composition of his grand jury, which included only one Black juror.²⁴ He provided statistical evidence that African Americans were underrepresented on county grand juries.²⁵ Several grand jury commissioners had testified in the trial court that they intended to place “just one negro on the grand jury,” and had deliberately done nothing to include more than one African-American member.²⁶ The Supreme Court, however, was “unconvinced” that the commissioners intentionally limited the number of Black grand jurors.²⁷

It was not until the 1960s and ’70s, when the Supreme Court adopted a “fair cross-section” standard—requiring the jury and grand jury pools to reflect the demographics of the jurisdiction—that some progress was made in increasing the representation of citizens of color in jury pools.²⁸

B. The Exclusion of African Americans from California Jury Rolls

As briefly summarized above, the United States has a long history of denying full citizenship rights to African Americans, women, and members of other groups. People of color—especially African Americans—are disproportionately excluded at every stage of jury selection.²⁹

Prospective jurors summoned to appear in California courts reflect that underrepresentation.³⁰

The exercise of peremptory challenges, which occurs at the last stage of jury selection, exacerbates the underrepresentation that occurs at the front end. However, it is essential to at least describe the disproportionate exclusion of people of color from the process by which jury rolls are assembled.

The superior court judges of each county appoint the county's jury commissioner who, at least once a year, creates a master list of prospective jurors by randomly selecting names from source lists of eligible citizens in the community.³¹ As mandated by article 1, section 16 of the California Constitution, a state statute specifies that source lists be "inclusive of a representative cross section of the population of the area served by the Court."³² Also by statute, the source list of registered voters ("ROV") and licensed drivers from the Department of Motor Vehicles ("DMV") are "appropriate source lists for selection of jurors and shall be considered inclusive of a representative cross section of the population, within the meaning of subdivision (a), which defines a fair cross section."³³ As a result of this statute, every California county uses only the ROV and DMV databases as jury source lists.³⁴

Names are drawn from the source lists to create a master list.³⁵ The jury commissioner's office notifies individuals whose names are selected from the master list to appear in court for possible jury selection and appearance in the venire.³⁶

Studies have shown that using ROV and DMV records as source lists results in the underrepresentation of African Americans.³⁷ One study, which surveyed a total of 1,275 community residents on a master list in Orange County, revealed that when both the ROV and DMV lists were used, African Americans were underrepresented by 18.92% relative to their numbers in the population.³⁸ An early, but still cited, study on jury composition estimated that the use of ROV lists automatically excludes approximately one-third of the adult population, reducing the number of people of color, including African Americans, in the master lists.³⁹

The same study reported that 41.3% of jury-eligible individuals in California are not on ROV lists.⁴⁰ Of the 41.3% of jury-eligible individuals who do not appear on California ROV lists, a disproportionately large number are African American. This is due in part to felony disenfranchisement.⁴¹ Until January 2020, Californians who had a felony conviction were not permitted to serve on juries.⁴²

Of those African Americans who are eligible to vote, additional socioeconomic barriers make them less likely to register than Whites.⁴³ People with unstable employment experience higher rates of residential and geographic mobility.⁴⁴ These factors have been shown to decrease the likelihood that they will register to vote and therefore appear on ROV lists.⁴⁵ Using national data over a three-year period, one study found that 48% of African Americans were geographically transient, compared to only 25.2% of Whites.⁴⁶ This makes it less likely African Americans will appear on ROV lists than Whites.⁴⁷

Several studies have demonstrated that using multiple source lists increases the percentage of African Americans in the master list.⁴⁸ The use of additional source lists such as tax lists, property lists, utility customer lists, city and telephone directories, and welfare or public benefit payment lists would increase the number of African Americans on the master list.⁴⁹ To date, only one California county uses source lists beyond the ROV and DMV; no California courts supplement their lists with welfare or unemployment records.⁵⁰

It has been more than 35 years since the California Supreme Court found that a defendant had established underrepresentation of people of color in the composition of a jury sufficient to satisfy the state or federal constitutional fair cross-section requirement.⁵¹ In several cases, however, courts of appeal have acknowledged findings that African Americans are underrepresented in jury venires.⁵² Some California studies also confirm that these disparities exist in California jury pools. For example, a 2010 survey conducted in Alameda County showed underrepresentation of African Americans in its jury pools.⁵³ The survey found that African Americans “represent 18% of the eligible jury pool in the county but comprised only 8% of the people who appeared for jury duty” in the trials studied.⁵⁴ Whites comprised the same percentage of the jury pool as the percentage of jury-eligible Whites in Alameda County, suggesting that Whites may not be affected by the many legal and non-legal obstacles that result in the underrepresentation of African Americans in jury source lists.⁵⁵

C. Peremptory Challenges: From Judicial Intervention to Judicial Retreat

“The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry and without being subject to the court’s control.”⁵⁶ The peremptory challenge has its roots in English common law.⁵⁷ As early as the 14th century, however, Parliament began to restrict the right of the King’s counsel to exercise peremptory challenges.⁵⁸ In American courts, the right of the defendant to exercise peremptory challenges “was accepted as part of the common law.”⁵⁹ However, the prosecution was not universally entitled to exercise peremptory challenges in the United States until the late 19th century.⁶⁰ Unlike challenges for cause, peremptory challenges are not constitutionally guaranteed.⁶¹

1. The United States Supreme Court’s Resistance to Remedying Exclusion

The United States Supreme Court has readily acknowledged that the peremptory challenge is “frequently exercised on grounds normally thought irrelevant to legal proceedings or official action, namely, the race, religion, nationality, occupation or affiliations of people summoned for jury duty.”⁶² For almost two centuries, state and federal courts in this country accepted these strikes as “a necessary part of trial by jury.”⁶³

In 1965, in *Swain v. Alabama*, the Court ruled for the first time that the prosecution’s exercise of peremptory challenges against Black prospective jurors *might*, in very specific circumstances, violate the Equal Protection Clause.⁶⁴ In *Swain*, an Alabama case in which a Black man was convicted and sentenced to death by an all-White jury for the rape of a White woman,⁶⁵ the

prosecutor struck all six of the prospective Black jurors.⁶⁶ The Court found that the utility of peremptory challenges in “the institution of the jury trial” precluded it from examining the prosecution’s strikes in the specific case, much less finding that those challenges violated the Equal Protection Clause.⁶⁷ The Court expressed a willingness to entertain a constitutional argument, but only upon a showing that the prosecution exercised strikes systematically, in trial after trial, so as not “to leave a single Negro on any jury in a criminal case.”⁶⁸

2. California’s Intervention in *People v. Wheeler*

In 1977, *American Law Reports* published a nationwide review of the use of peremptory challenges and the application of the *Swain* standard in civil and criminal cases.⁶⁹ The author analyzed every criminal case decided in the 10 years after *Swain* in which courts had considered an objection to the exercise of peremptory challenges against Black jurors.⁷⁰ The report found that, under the *Swain* standard, it was nearly impossible to prove that a peremptory challenge was based on race.⁷¹ “[I]n all of the cases involving this issue thus far, *all of which have dealt with blacks as the group peremptorily challenged*, no defendant has yet been successful” in proving the peremptory challenges were exercised in a discriminatory manner.⁷²

A year later, in *People v. Wheeler*, our state supreme court, relying on the independent force of article 1, section 16 of the California Constitution, acknowledged the injustice that the United States Supreme Court would not begin to address until eight years later.⁷³ In *Wheeler*, as the prosecutor struck all the prospective Black jurors, the defense attorneys repeatedly moved for a mistrial, arguing that the prosecutor’s challenges made it impossible for the defendants to be tried by “a fair cross section of the community.”⁷⁴ The trial judge denied their motions, and the two Black defendants were tried and convicted of the murder of a White man by an all-White jury.⁷⁵ The California Supreme Court reversed their convictions.⁷⁶ The court held that, in a criminal case, when any party exercises a peremptory challenge because the juror belongs to “an identifiable group distinguished on racial, religious, ethnic, or similar grounds,” the conduct “violates the right to trial by a jury drawn from a representative cross-section of the community.”⁷⁷

The court in *Wheeler* found it intolerable that, under *Swain*, defendants had a federal constitutional right to equal protection that they could not secure because the standard made it “virtually impossible” to do so.⁷⁸ A defendant could only meet the *Swain* bar by proving that the prosecutor struck every Black juror in “an undetermined number of individual trials.”⁷⁹ The court observed that “numerous black defendants have attempted to comply with [the *Swain* burden of proof], but none has succeeded.”⁸⁰ Criminal defendants had neither the time nor funds to conduct the research, nor was the data—including a record of the race of each struck juror in every trial—reasonably available.⁸¹ The court cited the 1977 *American Law Reports* article, and agreed that the “California experience has been identical.”⁸²

The California Supreme Court in *Wheeler* acknowledged the high court’s unwillingness to disturb the “nature and operation” of peremptory challenges.⁸³ The court recognized that the

Supreme Court would reject any challenge under any provision of the federal Constitution that might diminish the prosecution's ability to strike jurors free from scrutiny, and declared, "*Swain v. Alabama* is not to be followed in our courts."⁸⁴

The *Wheeler* opinion announced a procedure by which a party could demonstrate that the opposing attorney was exercising a peremptory challenge based "on the ground of group bias alone."⁸⁵ In its search for a remedy, the court looked to legal scholars.⁸⁶ However, two unexamined premises restricted the court's options: (1) the assumption that retaining at least some peremptories serves a necessary function in ensuring the parties' ability to excuse some jurors who have invidious biases, but who are not so clearly biased as to be subject to a cause challenge; and (2) the assumption that prosecutors will act honestly, fairly, and free of racial prejudice in exercising strikes unless and until the defense shows the contrary.⁸⁷ Given these assumptions, proposals to eliminate peremptory challenges or allow them only for the defense were off the table.⁸⁸ Although the court's decision was grounded in the state Constitution's fair cross-section provision, the court adopted an approach that was lifted from equal protection analysis.⁸⁹ This report explains why the chosen remedy was destined to fail and how that failure has played out over the last 40-plus years.

Wheeler adopted a three-step test. First, the attorney objecting to the strike, having made a record of what has transpired, must show both that the jurors who were the subject of the strikes belong to "a cognizable group" and establish "a strong likelihood" of a fair cross-section violation, also known as a prima facie showing.⁹⁰ Second, if the judge finds a prima facie showing (which *Wheeler* also referred to as "a reasonable inference"), the burden shifts to the party who made the peremptory challenges to show that the party did not act on the basis of "group bias alone."⁹¹ Third, the trial judge determines the validity of the reasons.⁹² If the court finds that any one of the challenges was based on group bias, the fair cross-section requirement has not been met, and the judge must dismiss the venire and begin jury selection again.⁹³

As we explain below, when the United States Supreme Court reversed *Swain* in *Batson* in 1986 on equal protection grounds, the Court adopted a similar three-step procedure.⁹⁴ For simplicity, when discussing objections to peremptory challenges, we refer throughout the report to the *Batson* procedure—rather than to the *Batson/Wheeler* procedure—unless there is a specific reason to reference *Wheeler*.⁹⁵

3. The United States Supreme Court Decides *Batson v. Kentucky*

In 1986, the United States Supreme Court decided *Batson v. Kentucky*, announcing that *Swain*'s evidentiary burden was "crippling," and that "a defendant may establish a prima facie case of purposeful discrimination in the selection of the petit jury based solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial."⁹⁶ The Court held that discriminatory jury selection practices "harm" the defendant, the excluded juror, and "the entire community" because they "undermine public confidence in the fairness of our system of justice."⁹⁷ The Court's identification of these three interests was foundational to its extension of *Batson*'s protections in subsequent opinions.⁹⁸

Unlike *Wheeler*, the decision in *Batson* was grounded squarely in the Fourteenth Amendment's Equal Protection Clause.⁹⁹ But like *Wheeler*, the Supreme Court in *Batson* adopted a three-step (or three-stage) procedure for determining whether the prosecution purposefully discriminated against a Black prospective juror in the exercise of a peremptory challenge.¹⁰⁰ At step one, the defendant must establish a “prima facie case” of purposeful discrimination.¹⁰¹ To do so, the defendant need only raise an “inference” of discrimination based upon “all relevant circumstances.”¹⁰² If the trial court agrees that the defendant has made a prima facie showing, the inquiry moves to the second step. At step two, the prosecution must “come forward with a neutral explanation for challenging black jurors,” which must be “related to the particular case to be tried.”¹⁰³ The majority stated that a prosecutor may not rebut the prima facie showing by simply “denying” that he had “a discriminatory motive” or insisting that he acted in “good faith.”¹⁰⁴ At the third step, the trial court decides whether the defendant has established purposeful discrimination.¹⁰⁵ The Court left no doubt that, consistent with all other equal protection challenges, the defendant must establish a “racially discriminatory purpose” to prevail on a *Batson* motion.¹⁰⁶

Justice Thurgood Marshall concurred in *Batson* to acknowledge that the Court had taken a “historic step,” but cautioned that the eradication of racial discrimination in jury selection “can be accomplished only by eliminating peremptory challenges entirely.”¹⁰⁷ He offered several reasons for his view. First, while a three-step procedure similar to the one adopted in *Batson* was already the law in states such as California and Massachusetts, the small numbers of African Americans in the venire made it exceedingly difficult for the defendant to establish a prima facie showing.¹⁰⁸ Second, he described the ease with which prosecutors could “assert facially [race] neutral reasons,” especially when they rely on a prospective juror’s demeanor, thus creating a “difficult burden” for judges who must assess the credibility of those reasons.¹⁰⁹ Last, Justice Marshall addressed the issue of “conscious or unconscious racism,” which leads prosecutors to characterize Black jurors in negative terms—especially with regard to demeanor—and judges to credit those reasons.¹¹⁰ This report shows how, in case after case, decade after decade, Justice Marshall’s predictions have been borne out.

Batson only prohibited prosecutors from striking Black jurors in trials involving Black defendants.¹¹¹ In later decisions, the Supreme Court extended *Batson* to apply to civil and criminal trials, to all trials irrespective of the race of the parties, to defense attorneys as well as prosecutors, and to strikes based on ethnicity or gender.¹¹² Some lower federal courts and state courts have expressly extended *Batson* to other groups such as those who have in common national origin, sexual orientation, or religious affiliation.¹¹³ Some states prohibit discrimination in jury selection under their state constitutions, by statute, or both.¹¹⁴

4. California Codifies the Prohibition Against Discriminatory Strikes

Ten years after *Wheeler*, in 1988, the California Legislature consolidated the relevant Penal and Civil Code sections into the Trial Jury Selection and Management Act, which governs “the selection of jurors, and the formation of trial juries, for both civil and criminal cases, in all trial

courts of the state.”¹¹⁵ California Code of Civil Procedure section 231.5 now states, “A party shall not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of a characteristic listed or defined in section 11135 of the Government Code, or similar grounds.”¹¹⁶ This section codifies the *Wheeler* decision. Government Code section 11135(a) prohibits discrimination by any state entity “on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation.”

5. California Declines to Enforce Batson

From 2003 through 2008, the United States Supreme Court issued a series of opinions in *Batson* cases. Several decisions clarified aspects of the *Batson* procedure in a way that signaled the need for lower courts to be more vigilant in disallowing discriminatory peremptory challenges: *Miller-El v. Cockrell* (*Miller-El I*), *Johnson v. California*, *Miller-El v. Dretke* (*Miller-El II*), and *Snyder v. Louisiana*.¹¹⁷ As we detail in Section III.E, dissenting justices on the California Supreme Court often rely on those decisions to demonstrate that the majority is failing to adhere to the high court’s *Batson* precedents.

In *Johnson*, the Supreme Court concluded that the test applied by California courts for determining whether a party has made out a prima facie case of purposeful discrimination at the first step of the *Batson* procedure was an “inappropriate yardstick.”¹¹⁸ For decades, at step one, our state courts required a party to demonstrate “it is more likely than not” that the peremptory challenge was based on group bias.¹¹⁹ The Supreme Court in *Johnson* reaffirmed *Batson*’s stage-one requirement: a party need only show that all of the circumstances give “rise to an inference of discriminatory purpose.”¹²⁰ Writing for the majority, Justice John Paul Stevens explained, “The *Batson* framework is designed to produce actual answers to suspicions and inferences that discrimination may have infected the jury selection process.”¹²¹ Therefore, when there is an inference that a peremptory challenge was based on race, the trial judge should not speculate about the purpose because “a direct answer can be obtained by asking a simple question”: What was the reason for the strike?¹²² Since *Johnson* was decided in 2005, the California Supreme Court has not found step-one error in a single case.¹²³ In Sections III.E.1 and III.E.2, we discuss how the California Supreme Court, employing a variety of analytic techniques—including hypothesizing about reasons the prosecutor never offered—continues to impose an heightened threshold at step one.

Miller-El II, a Texas death penalty case, involved the third step of the *Batson* procedure, that is, whether, considering all of the circumstances, a party intentionally exercised a peremptory challenge based on race.¹²⁴ The prosecutor in *Miller-El II* used his peremptory strikes to remove 10 of 11 African-American prospective jurors.¹²⁵ The Supreme Court commented, “More powerful than these bare statistics, however, are side-by-side comparisons of some black venire panelists who were struck and white panelists allowed to serve.”¹²⁶ This approach, known as comparative juror analysis, was central to the Court’s decision in *Miller-El II*,¹²⁷ even under

the highly deferential standard of review that applies when federal courts review state court judgments in habeas corpus proceedings.¹²⁸ The Court compared the struck Black panelists to the seated White jurors in several respects, including the similarity of their answers to specific questions and the prosecution's disparate questioning of Black and White jurors on the same topic.¹²⁹ The Court in *Miller-El II* also emphasized that this type of comparison requires only that the jurors be "similarly situated," not that they be "identical in all respects."¹³⁰ "A *per se* rule that a defendant cannot win a *Batson* claim unless there is an exactly identical white juror would leave *Batson* inoperable; potential jurors are not products of a set of cookie cutters."¹³¹ Because the party exercising the strike bears the burden of providing an explanation, the majority warned against speculation by trial or reviewing courts that might "imagine a reason" when "the stated reason does not hold up."¹³² The Court also declared that when a reason turns out to be false, unsupported by the record, or pretextual, any "new explanation" is highly suspect.¹³³

In *Snyder*, a Louisiana death penalty case, the prosecution struck all the African Americans in the venire, but the Supreme Court decided the *Batson* issue based on just one of the peremptory challenges.¹³⁴ The prosecutor said that he struck Mr. Brooks, an African-American man who was studying for his teaching credential, based on his demeanor (nervousness) and his university-related obligations, which the prosecutor asserted might lead the juror to convict Snyder of a lesser included offense in order to avoid sitting through a penalty phase trial.¹³⁵ Because there was no record as to whether the trial judge credited the demeanor-based reason, the Court would not "presume" that the judge had done so, and decided the issue solely on the second reason.¹³⁶ The Court reviewed the voir dire transcript and acknowledged the "implausibility" of the reason concerning the juror's schedule.¹³⁷ The Court then compared the struck juror's situation to that of two seated White male jurors. It found that the White jurors had "conflicting obligations that appear to have been at least as serious as Mr. Brooks'," and concluded that the strike was the result of intentional discrimination.¹³⁸

There are at least three important take-aways from *Snyder* when considering how the California Supreme Court has applied the opinion. First, the high court reaffirmed its position in *Batson* that the "Constitution forbids striking even a single prospective juror for a discriminatory purpose."¹³⁹ Second, when the party making the strike gives two reasons, one based on the juror's demeanor and the other a non-demeanor-based reason, if the trial court denied the motion "without explanation," a reviewing court may not defer to the demeanor-based reason.¹⁴⁰ Third, consistent with *Miller-El II*, the Supreme Court conducted a comparative juror analysis.¹⁴¹ The Court contrasted the prosecutor's questioning of the struck Black juror about his obligations with his questioning of the White seated jurors about their conflicting responsibilities.¹⁴² It concluded that the prosecution gave a "pretextual explanation."¹⁴³

In Section III.E.5, we examine the California Supreme Court's application of *Miller-El II* and *Snyder*. We describe barriers the court has erected to the meaningful application of comparative juror analysis based on the majority's fundamental reservations about the approach. These hurdles, dissenting justices explain, cannot be reconciled with the high court's robust use of the analysis.

In two more recent decisions, *Foster v. Chatman* and *Flowers v. Mississippi*, the Supreme Court employed comparative juror analysis in deciding that the prosecution had violated *Batson*.¹⁴⁴ In *Foster*, for example, the prosecutor gave eight reasons for removing a Black juror, including the age of the juror's son (close to the defendant's), his "confused" view about the death penalty, and his wife's work at a hospital for "mentally ill people."¹⁴⁵ The Court found, however, that the prosecutor retained White jurors whose sons were young men and who also expressed "confusion about the death penalty questions," and did not strike a White juror who worked at the same hospital.¹⁴⁶ In *Flowers*, the state challenged a Black woman because, among other reasons, she was acquainted with members of the defendant's family.¹⁴⁷ The Court concluded that the explanation was pretextual because her relationship with the family was similar to that of other seated White jurors.¹⁴⁸ Employing "side-by-side" juror comparisons as a critical method of analysis in both cases, the Court adhered to its view that any justification that applies equally to both the struck juror and one or more seated jurors is evidence of discriminatory intent, regardless of whether the jurors were dissimilar in other respects.¹⁴⁹ By contrast, as Section III.E.5 explains, the California Supreme Court continues to raise the bar for finding *Batson* error using this approach by requiring that the Black struck jurors and seated White jurors be substantially similar in all respects.

This brief overview shows that, historically, California was not exempt from the wholesale exclusion of people of color—especially African Americans—from jury service and that underrepresentation in jury venires is a present-day inequity in our judicial system. Although the California Supreme Court in *Wheeler* was a leader in addressing discriminatory peremptory challenges, today's court does not adhere to the United States Supreme Court's directives aimed at enforcing *Batson*. Through our empirical investigation of court of appeal opinions and prosecution training practices, analysis of social science research on discrimination, and an examination of the California Supreme Court's jurisprudence, we expose the intractable and irremediable nature of discriminatory peremptory challenges under the *Batson* regime.

II.

EMPIRICAL FINDINGS

We conducted an empirical study to understand how prosecutors use peremptory challenges and how California courts review *Batson* claims. We found that prosecutors across California use peremptory strikes to disproportionately remove African-American and Latinx citizens. Further, California appellate courts seldom reverse trial court decisions for *Batson* error, instead upholding prosecutors’ reasons for striking Black and Latinx jurors as race-neutral and credible. Taken together, these findings suggest both that California has a serious *Batson* problem and lacks an effective judicial mechanism (or the judicial will) to address it. This section first describes our empirical findings about how prosecutors in California use peremptory challenges against Black and Latinx jurors, offering examples from cases that illustrate the insidiousness of purportedly “race-neutral” justifications. Second, this section catalogues the state supreme court and court of appeal *Batson* cases, revealing the shockingly low rate at which they find *Batson* error. Finally, comparing the reversal rate in our state courts with that of the Ninth Circuit in its review of *Batson* cases under a highly restrictive standard, we show that the circuit nonetheless finds *Batson* error over seven times more often than the California Supreme Court and almost six times more often than the California Courts of Appeal.

A. California Prosecutors Use Peremptory Strikes to Disproportionately Remove Black and Latinx Jurors

We reviewed 683 decisions of the California courts of appeal involving *Batson* claims from 2006 through 2018.¹⁵⁰ (Appendix A sets out the methods used in the data collection and analysis). During this 12-year period, defense counsel objected to prosecutors’ strikes in 670 cases, 98.0% of the total number of cases involving *Batson* claims.¹⁵¹ See Figure 1. Of these 670 cases, 71.6% (480) involved objections to prosecutors’ use of peremptory challenges to remove Black jurors. Of the remaining cases, prosecutors removed Latinx jurors in 28.4% (190) of cases, Asian-American jurors in 3.4% (23) of cases, and White jurors in three cases (0.5%). Only 14 cases (2.0% of the total) involved claims that defense counsel had exercised discriminatory peremptory strikes. Defense counsel struck Asian-American jurors in four cases, White jurors in four cases, Black jurors in three cases, and Latinx jurors in one case.¹⁵² See Figure 2.

Percentage of *Batson* Motions by Party

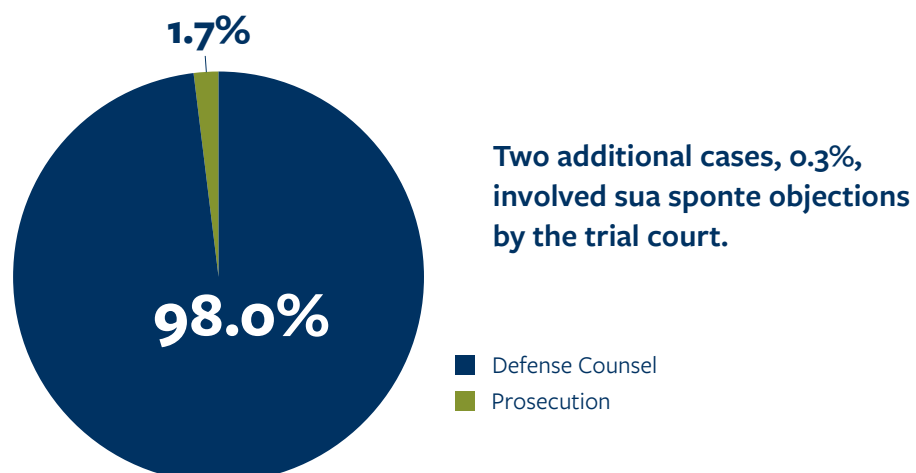


Figure 1¹⁵³

Strikes by Race and Ethnicity

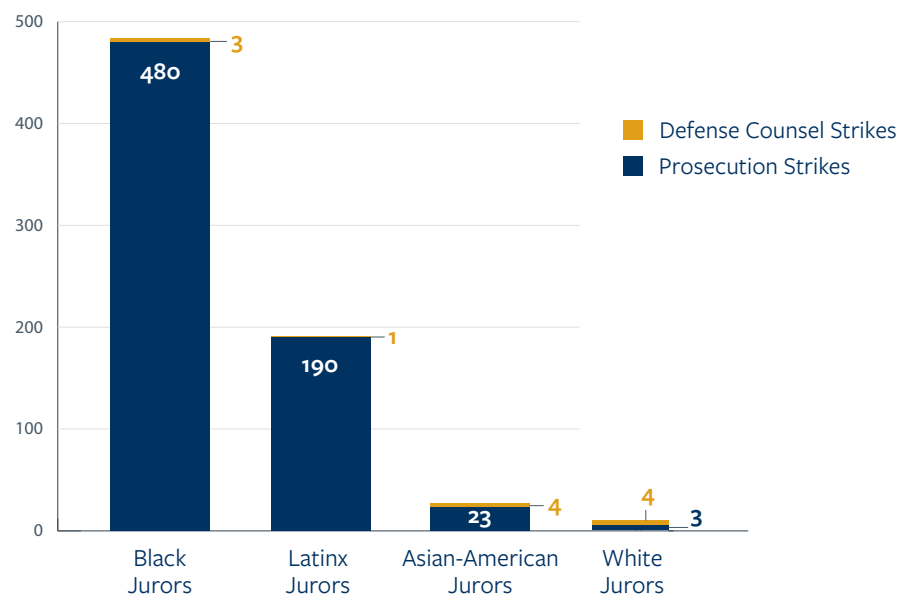


Figure 2

B. California Prosecutors Rely on Racial and Ethnic Stereotypes to Remove Black and Latinx Jurors

We coded the reasons prosecutors gave for striking jurors into six categories. These categories are nearly identical to those listed in subsections (h) and (i), respectively, of Washington Supreme Court General Rule 37 (“GR 37”): “Reasons Presumptively Invalid” and “Reliance on Conduct.” We discuss GR 37 in Section IV.C. A copy of GR 37 is Appendix B to the report. GR 37 declares that the enumerated “reasons for peremptory challenges have been associated with improper discrimination in jury selection in Washington State.”¹⁵⁴ The categories are:

- a. having prior contact with law enforcement officers;
- b. expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;
- c. having a close relationship with people who have been stopped, arrested, or convicted of a crime;
- d. living in a high-crime neighborhood;
- e. having a child outside of marriage; and
- f. demeanor-based conduct.¹⁵⁵

We did not include two of GR 37’s categories, (h)(vi) “receiving state benefits” and (h)(vii) “not being a native English speaker,” because these were almost never used.

For most of the analysis that follows, we report data at the case level. However, we also coded the reasons offered for peremptory challenges at the juror level to accurately account

for cases in which more than one juror was struck. We use that data to report the type of challenge raised against jurors of different races and ethnicities below. For more information see Appendix A.

1. Reliance on Racial and Ethnic Stereotypes: Case-Level Data

Prosecutors' reasons for striking jurors correlate with racial stereotypes. (Sections III.A, III.C, and III.D discuss implicit and explicit racial stereotypes.) As Figure 3 below shows, prosecutors relied on demeanor as a reason for their peremptory challenges in over 40% of the cases.¹⁵⁶ Demeanor-based explanations were used to exclude jurors who exhibited a poor attitude, were sleeping, appeared confused, or failed to make eye contact with the prosecutor. In 35% of the cases, prosecutors relied on a juror's close relationship with people who had been stopped, arrested, or convicted of a crime. Nearly as often, in over 34% of the cases, prosecutors explained that the struck jurors distrusted law enforcement or the criminal legal system or believed that law enforcement or the criminal legal system is racially- or class-biased. Prosecutors gave prior contact with law enforcement or the criminal legal system as a reason in more than 21% of the cases. And in approximately 4% and 1.5% of the cases, respectively, prosecutors struck jurors because they lived in a high-crime neighborhood or had a child outside of marriage.

Prosecution's Reasons for Challenging Jurors by Case

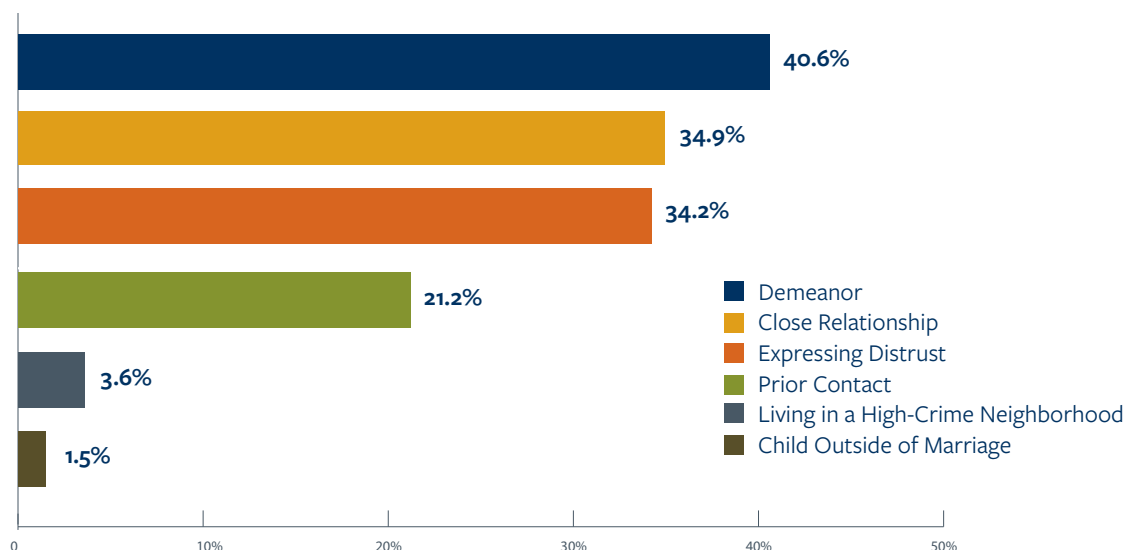


Figure 3¹⁵⁷

A review of these cases leaves no doubt that prosecutors' exercise of race-based peremptory challenges is very much a present-day practice. Consistent with the findings of every other study, prosecutors in California disproportionately use peremptory challenges to exclude Blacks from juries.¹⁵⁸ As in other jurisdictions, prosecutors often offer many reasons—a “laundry list”—for each strike.¹⁵⁹ For example, an Alameda County prosecutor struck a Black juror because he was slouching, pursuing a criminal justice degree, believed the criminal legal system was unbalanced, and cited the events in Ferguson, Missouri to explain why he no longer wanted to be a police officer.¹⁶⁰

2. “Race-Neutral” Reasons: Strikes of Black Jurors

Our study found that prosecutors disproportionately strike Black prospective jurors and justify these strikes because of the prospective jurors’ demeanor, appearance, distrust of the criminal legal system, relationship with someone who had a negative experience with law enforcement, and place of residence. Here, we report on the reasons prosecutors gave for striking Black jurors and the frequency with which they gave these reasons for their strikes.

We determined that prosecutors most often relied on demeanor as a reason for striking Black jurors. Of the 480 cases in which prosecutors struck Black jurors, they offered a demeanor-based reason in 37.5% (180 cases) of these cases. As we discuss in Sections III.A and III.C, these reasons correlate with racial stereotypes of African Americans because we unconsciously and reflexively categorize people based on demeanor. For example, in a 2014 trial, an Alameda County prosecutor struck a Black juror, in part, because he “‘had a very harsh demeanor . . . [The juror] was an imposing individual who gave short curt answers . . . [and] was falling asleep.’”¹⁶¹ In a 2014 trial, a Los Angeles County prosecutor struck two Black jurors because both did not make eye contact with her, and one was “‘sleeping out in the hallway” during a break.¹⁶² In another Los Angeles County trial, a prosecutor excused a Black juror because she “‘felt that he just wasn’t that bright.’”¹⁶³ In yet another Los Angeles County case, a prosecutor struck a Black juror because she “‘had few interactions with others in the hallway and had not made friends with the other jurors, as well as seem[ed] animated and attentive to defense topics and questions, but not so animated during prosecution questions.’”¹⁶⁴ A Riverside County prosecutor struck a Black juror who he described as “‘very defensive, because she had her arms crossed, and . . . seemed a little hostile by her body language.’”¹⁶⁵ In another Riverside County trial, a prosecutor excluded a Black juror because he was “‘over-eager . . . and did not stay focused.’”¹⁶⁶

“Appearance” was not one of the GR 37 categories, and therefore we did not separately code appearance as a category. However, prosecutors also offered both demeanor- and appearance-based reasons as grounds for a single peremptory challenge with sufficient frequency to warrant mention. As we discuss in Section III.D, California prosecutors are trained to avoid successful *Batson* objections by justifying strikes based on a prospective juror’s appearance. Section III.A shows that these reasons also correlate with racial stereotypes of African Americans: we unconsciously and reflexively categorize people based on their appearance. For example, a Riverside County prosecutor struck a Black juror because he was wearing dollar sign diamond earrings and, thus, was not the ideal conservative juror.¹⁶⁷ A Los Angeles County prosecutor explained that she struck a Black juror because his dreadlocks touched the floor, which made him incompatible with a “‘cohesive group’ of persons made of persons ‘of the same, kind of fall into societal norms.’”¹⁶⁸ Another Los Angeles County prosecutor exercised a peremptory challenge against a Black woman because “‘she was wearing a very short skirt, 12-inch earrings, and had on these sandals that were blinged out with . . . at least 100 cubic zirconia on each one.’”¹⁶⁹ Yet another Los Angeles County prosecutor said that she struck a Black juror because the juror had “‘extraordinarily long pink fingernails’ and braided hair” and

therefore was likely “fairly liberal.”¹⁷⁰ In a 2015 trial, a Yolo County prosecutor explained that she struck a Black juror because she was “morbidly obese,” stating that she has “concern about people who are morbidly obese, how they might interact with other jurors, [and] what motivates them.”¹⁷¹ A Sacramento County prosecutor struck one Black juror because “he was wearing dreadlocks. And it’s my understanding . . . that dreadlocks are somewhat associated with a Reggae culture . . . [that] promotes drug use . . . in general.”¹⁷²

When a prosecutor challenges a juror based upon the juror’s status (such as employment, age, education level) or statement, or based upon an inference the prosecutor has drawn from the juror’s status or statement, the record—the jury questionnaire and/or the voir dire transcript—can refute or confirm the accuracy of the explanation. When a prosecutor relies on demeanor or appearance, there are only two checks on the accuracy of the reasons: (1) the defense counsel’s rebuttal, if any; and (2) the court’s ruling, which often does not address the accuracy of the prosecutor’s description and is highly susceptible to the judge’s implicit biases.¹⁷³ As Section III.A discusses, judgments based upon demeanor and appearance are particularly susceptible to implicit bias. In ruling on the motion, the trial judge is as likely as the prosecutor to be influenced by implicit bias.

Nearly as often as demeanor-based reasons, prosecutors struck Black jurors for expressing a distrust of law enforcement or the criminal legal system or a belief that law enforcement or the criminal legal system is racially- or class-biased. This occurred in 34.8% (167 cases) of the 480 cases in which defense counsel challenged prosecutors’ strikes of Black jurors. In Sections III.A and III.C, we discuss the racialized content of these reasons, including African Americans’ greater distrust—compared to Whites’—of law enforcement and the criminal legal system based on the history of anti-Black racism in the United States and their lived experiences. For instance, an Alameda County prosecutor struck a Black juror because, according to the prosecutor, the juror would not be willing to follow the law since “she hopes the system is fair but it does need some overhaul when it comes to minorities being arrested and jailed more than non-minorities, especially in reference to drugs.”¹⁷⁴ In a Los Angeles County case, a prosecutor struck a Black juror because the juror may have struggled “to determine whether [the defendant] is guilty or not” since the juror saw “flaws” in the criminal legal system, such as better outcomes for wealthy criminal defendants.¹⁷⁵ In another Los Angeles County trial, a prosecutor struck a Black juror because the prosecutor concluded that the juror expressed “a lack of faith in law enforcement” because the juror was “robbed of jewelry at gunpoint yet had failed to report the crime to the police.”¹⁷⁶ The prospective juror, however, “claimed he had not reported the crime because he was not physically injured and only material items were taken”¹⁷⁷ In yet another Los Angeles County case, a prosecutor excluded a Black juror because the juror described her husband’s arrest when he was a minor as a “victim of [police] decision,” stating, “I feel that shows a bias.”¹⁷⁸ A San Joaquin County prosecutor struck a Black juror because he stated that he had been “falsely accused” and spent four months in jail, which, according to the prosecutor and despite the juror’s assertion otherwise, “gave him a lot of empathy and . . . sympathy for . . . [the] defendant.”¹⁷⁹

Next, prosecutors relied on the juror's close relationship with someone who had negative contact with law enforcement—that is, a person who had been stopped, arrested, or convicted of a crime—as the reason for the strike. As Section III.C discusses, African Americans are more likely to be stopped, arrested, and convicted of a crime than any other racial or ethnic group. Prosecutors offered this reason for striking Black jurors in 33.3% (160) of the 480 cases in which defense counsel challenged prosecutors' strikes of Black jurors. For example, in an Alameda County case, the prosecutor explained that she struck a Black juror because the prosecutor believed that the juror could not be fair “in light of the fact that her family members all have had dealings with the Oakland Police Department.”¹⁸⁰ A Los Angeles County prosecutor struck a Black juror because “her son was arrested for a D.U.I.”¹⁸¹ In another Los Angeles County case, a prosecutor struck six of the nine Black jurors he ultimately removed because they all had family members who were convicted of a crime or were in prison.¹⁸² In a Sacramento County case, the prosecutor struck a Black juror because he had visited his two siblings when they were incarcerated.¹⁸³ In another Sacramento County case, a prosecutor excluded a Black juror because she reported in her questionnaire that her “son had been in jail for unlawful driving or taking of a vehicle,” but noted that he had “done wrong and had to serve time.”¹⁸⁴ In another Alameda County trial, a prosecutor removed a Black juror because, according to the prosecutor, the juror stated that “a number of her family members were involved in crimes and that she doesn't deal with them.”¹⁸⁵ The prosecutor said, “I find that kind of hard to believe that even if it were true.”¹⁸⁶ In none of these instances did the jurors state that they could not be fair as a result of their relationships with individuals who had been arrested or incarcerated.

In 21.7% (104) of these cases, prosecutors struck African Americans because the juror had a negative experience with police or the criminal legal system, although the juror may not have expressed a general distrust of law enforcement or the system. A Los Angeles County prosecutor struck a Black juror because he had been, in the juror's own words, “detained for being in the wrong part of town while black.”¹⁸⁷ In an Alameda County trial, a prosecutor excused a Black juror because she “had been arrested for purse snatching and placed on probation as a juvenile, and had on another occasion . . . been arrested by the Oakland Police Department and jailed.”¹⁸⁸ Another Alameda County prosecutor struck a Black juror because the prosecutor believed that the “traffic citation she received more than 10 years previously for driving without her seat belt . . . weighed heavily” on the juror.¹⁸⁹ In a 2005 Alameda County trial, a prosecutor excluded a Black juror who expressed dislike for a particular law enforcement officer who had ticketed her for running a stop sign in 1982.¹⁹⁰ In a 2013 trial, a Contra Costa County prosecutor explained that she struck a Black juror because of his 1962 “experience with a police officer . . . [who] he thought . . . was being racist,” although the juror made it clear that this event was “in the past.”¹⁹¹

Prosecutors also gave Black jurors' residence in a particular neighborhood as the reason for striking them.¹⁹² Prosecutors offered this justification in 2.5% (12) of cases. Given the history of slavery, Jim Crow, redlining, and the home-ownership gap between Blacks and Whites, the neighborhood in which African Americans live highly correlates with racial stereotyping. See Section III.C. In a San Francisco County case, the prosecutor explained that when asked about

“quality of life,” a Black juror who “lives in the Tenderloin . . . had no response”¹⁹³ A prosecutor in Alameda County said that she struck a Black juror because the juror “appeared desensitized to violence, based on the fact [*sic*] she lived in East Oakland and had been burglarized 15 times.”¹⁹⁴ A Los Angeles County prosecutor removed a Black juror because he was raised around gangs in Compton.¹⁹⁵ In another Los Angeles County case, the prosecutor struck a Black juror because the prosecutor found it “incredible” that she lived in South Central Los Angeles but had no contact with gang members.¹⁹⁶

3. “Race-Neutral” Reasons: Strikes of Latinx Jurors

Prosecutors exercised peremptory challenges against Latinx jurors for reasons similar to those they gave for their strikes against African-American jurors, but not nearly as frequently. Prosecutors removed Latinx jurors in 28.4% (190) of cases. As with Black jurors, prosecutors most often, in 41.1% (78) of these 190 cases, offered demeanor-based reasons for striking Latinx jurors. For example, in a Tulare County case, the prosecutor struck two Latino jurors based on their demeanor: one because he frowned and the other because he “seemed like he was confused.”¹⁹⁷ A Fresno County prosecutor struck a Latina juror because she “did not seem very friendly or communicative.”¹⁹⁸ In an Orange County case, the prosecutor said that they struck the Latina juror because they “didn’t like her,” and described her as “flippant” and someone who spoke “like a Valley Girl or like a teenager.”¹⁹⁹ A Los Angeles County prosecutor struck three Latinx jurors because one seemed “unsure of herself,” another had a “strong, aggressive personality,” and the other “was anti-social and withdrawn.”²⁰⁰ Another Los Angeles County prosecutor struck a Latino juror because the juror had “the most dialogue” with defense counsel.²⁰¹ A San Bernardino prosecutor struck four of the six Latinx jurors he challenged because one talked and thought “slow,” another was “very timid,” the third did not “appear ‘too bright,’” and the last was “‘very timid’ . . . and also lacked intelligence.”²⁰²

Prosecutors also offered appearance-based reasons for striking Latinx jurors. In a 2015 Los Angeles County case, a prosecutor struck a Latino juror because of his “big lobe earrings. . . .”²⁰³ The prosecutor said, “[I]t is almost like somebody walking in . . . with their pants falling down and showing their underwear.”²⁰⁴ A Contra Costa County prosecutor struck two Latino jurors based on their appearance—one because he wore “a large earring” and had “a goatee,” and the other because he had “extremely long, curly hair.”²⁰⁵ In a 2011 Santa Clara County case, a prosecutor gave a Latino juror’s attire as a reason:

‘[He] was wearing long shorts. Hanging out of . . . one of the shorts pockets was a red San Francisco 49ers lanyard, which is the type of lanyard you see being handed out in San Jose by the bail bonds people as a free gift . . . He had long white tube socks on pulled up to his knees and Nike Cortez sneakers on, which I know to be attire of somebody who is a gang member.’²⁰⁶

A San Mateo County prosecutor struck a Latina juror for her “youthful and untraditional appearance, which included blue nail polish and very torn jeans.”²⁰⁷

Nearly as often as demeanor-based reasons, prosecutors based their strikes on a Latinx juror’s close relationship with someone who had a negative experience with law enforcement, including having been stopped, arrested, or convicted of a crime. Prosecutors offered this reason in 33.7 % (64) of cases. A Riverside County prosecutor excluded three Latinx jurors because they all had family members who were incarcerated.²⁰⁸ In a Contra Costa County trial, the prosecutor struck a Latina juror because someone in her family had been in prison, notwithstanding the fact that (1) the family member was a stepson who had been incarcerated 10 years earlier and with whom she had little contact, and (2) her deceased husband had been a police officer for two decades.²⁰⁹ In a 2015 Los Angeles County case, the prosecutor struck two Latinx jurors because he was “concerned that they both had a close family member involved with the criminal justice system,” though he acknowledged that the jurors “believed they could be fair.”²¹⁰ In a 2016 Los Angeles County trial, the prosecutor struck one Latino juror because his wife had pleaded guilty to welfare fraud, even though the juror stated “that would not prevent him from being fair.”²¹¹ A Fresno County prosecutor struck a Latina juror because of possible bias from the search and arrest of her husband, despite her assertion that she would not hold this incident against the police.²¹²

In 26.8% (51) of cases involving challenges to Latinx jurors, prosecutors removed them for expressing a distrust of law enforcement or the criminal legal system or a belief that law enforcement or the criminal legal system is racially- or class-biased. In a Yolo County case, the prosecutor struck a Latina juror because she had a negative experience with law enforcement that led her to conclude “anyone can be accused of something they didn’t do and are treated like a criminal even when the police report states otherwise.”²¹³ A Santa Clara County prosecutor struck a Latina juror because she stated that her cousin had been treated unfairly by the criminal legal system, which the prosecutor believed gave her “sympathy for defendants.”²¹⁴ In a Sacramento County case, the prosecutor struck a Latina juror because she indicated on her juror questionnaire that “the justice system treats people unfairly because of race or ethnic background.”²¹⁵

In 17.4% (33) of cases involving challenges to Latinx jurors, prosecutors cited jurors’ own prior experience with law enforcement or the criminal legal system as a reason for their peremptory challenges. A Los Angeles County prosecutor struck a Latino juror because, in the 1970s, the juror and a Black friend had a negative experience with police officers in which the officers hit his friend.²¹⁶ The juror “stated that nonetheless he did not harbor any resentment toward officers.”²¹⁷ In another Los Angeles County case, a prosecutor struck a Latina juror because she had an eight-year-old D.U.I. conviction, despite her belief she had been treated fairly in those proceedings.²¹⁸ In a 2008 Yolo County trial, the prosecutor removed a Latino juror because 42 years earlier, as a teenager, he “had been kicked off of a ladder by a border patrol officer who was chasing” undocumented people.²¹⁹ A Tulare County prosecutor struck a Latino juror because he had been charged with a D.U.I., which the prosecutor assumed biased him against law enforcement.²²⁰

In 6.3% (12) of cases involving strikes of Latinx jurors, prosecutors offered a juror's neighborhood as the reason for their peremptory challenge. For example, a Kern County prosecutor struck a Latina juror because the juror had "just moved out of Wasco," and the prosecutor had a "degree of skepticism about anybody from Wasco" because of "the people in that town and their criminality."²²¹ In a Riverside County case, the prosecutor struck a Latina juror because the prosecutor found it "very difficult to believe" that the juror was from Moreno Valley and had not seen graffiti or was not aware of gangs in the area.²²² A Contra Costa County prosecutor struck a Latino juror because the juror was "from the San Pablo area which is a lower class area within our county."²²³

4. Reliance on Racial and Ethnic Stereotypes: Juror-Level Data

We coded the reasons for each of the jurors by race and ethnicity—that is, the juror was the unit of analysis. See Figure 4. Of the total number of Black jurors they struck, prosecutors asserted that:

1. 25.6% expressed a distrust of law enforcement or the criminal legal system or a belief that law enforcement or the criminal legal system is racially- or class-biased;
2. 23.5% had a close relationship with people who had prior contact with law enforcement or the criminal legal system;
3. 23.2% had inappropriate demeanor;
4. 13.2% had prior contact with law enforcement or the criminal legal system;
5. 1.4% lived in a high-crime neighborhood; and
6. 0.6% had a child outside of marriage.²²⁴

Of the total number of Latinx jurors they struck, prosecutors asserted that:

1. 20.8% had inappropriate demeanor;
2. 15.8% had a close relationship with people who had prior contact with law enforcement or the criminal legal system;
3. 10.8% expressed a distrust of law enforcement or the criminal legal system or a belief that law enforcement or the criminal legal system is racially- or class-biased;
4. 6.9% had prior contact with law enforcement or the criminal legal system;
5. 2.1% lived in a high-crime neighborhood; and
6. 0.9% had a child outside of marriage.²²⁵

Prosecution's Reasons for Challenging Jurors By Juror Race/Ethnicity

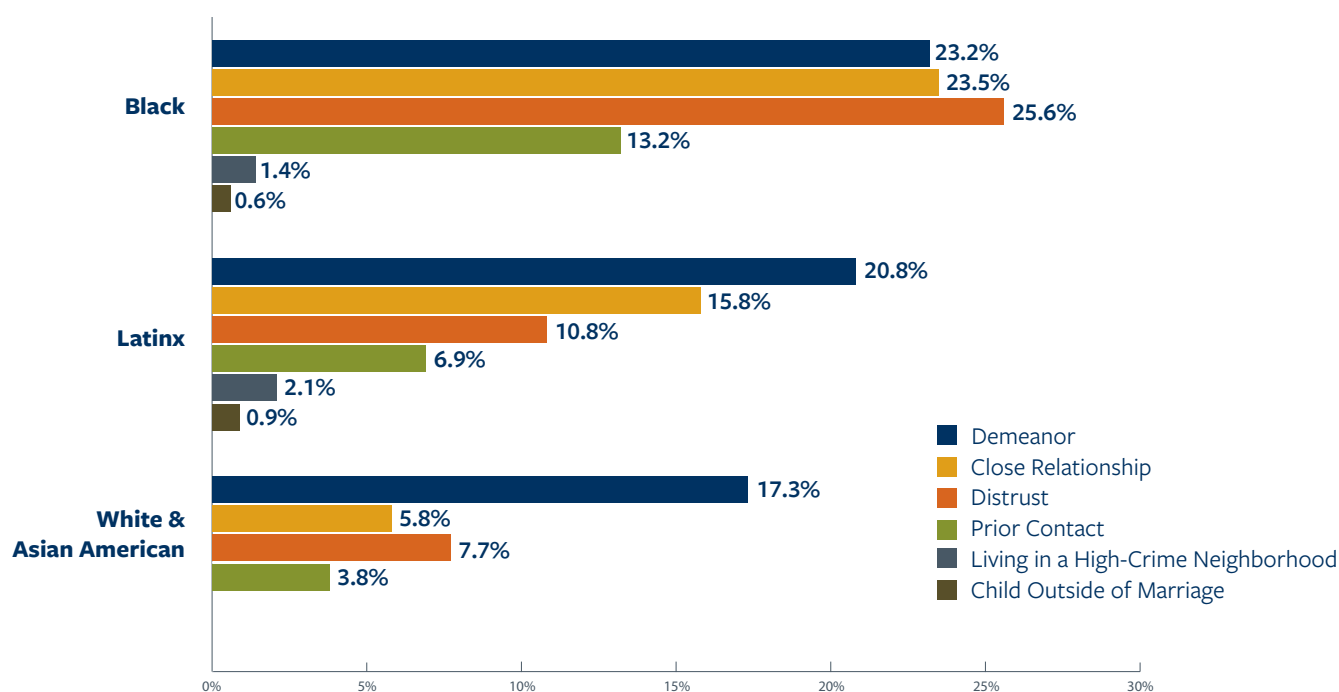


Figure 4²²⁶

5. Strikes of Cognizable Subgroups: Women of Color

Gender cases involving race or ethnicity are difficult to categorize. In Appendix A, we explain our decision not to report the data on the frequency of strikes against racial and ethnic subgroups. Neither the United States Supreme Court nor most lower federal courts have held that racial or ethnic subgroups—Black women, for example—are cognizable.²²⁷ The California Supreme Court, however, has long held that subgroups can comprise a distinct cognizable class.²²⁸ Irrespective of how defense counsel, the trial court, or the court of appeal characterizes the *Batson* objection, some California appellate opinions reveal both the sexism and racism embedded in prosecutors' reasons—either implicit or explicit.²²⁹ When striking female jurors, prosecutors offered the following reasons with sufficient frequency to warrant mention: jurors' nail length and color, heel height and shoe color, hair-style and color, and clothing style, including type of jewelry, especially when the prospective juror was an African-American woman. The following are representative examples of these explanations:

“I did not like the way she was dressed and presented herself . . . to me that's a sign of lack of maturity. Low cut clothing with sandals.”²³⁰

“The other part of my reason is, frankly, her orange hair color which indicates to me she is not really one to conform with others.”²³¹

“Juror B. was a single mother who had her first child at age 18 and her second at age 21, by different fathers. Juror B. seemed to have a very nontraditional and ‘kind of counter cultural’ lifestyle . . . [T]he prosecutor cited her ‘red streakish hair.’ She believed Juror B. was ‘not someone who would be . . . a conservative juror that would convict somebody.’”²³²

“I excused this person based on her physical appearance as she came in yesterday. She was wearing 5-inch heels, red pumps. She had gray, 3-inch claw nails. She had folded arms the entire time. She was wearing a spider pin. Her entire appearance seemed to me like the type of person who has her own personality, someone who is not afraid to be different, someone who may be a problem in the jury room, . . . someone who can maintain her position and, therefore, possibly hang the jury.”²³³

The California courts of appeal are sources of precedent in *Batson* cases. Our study finds that the opinions overwhelmingly affirm the use of peremptory challenges to exclude Black and Latinx jurors. Although most of these opinions are unpublished, they serve to validate prosecutors’ reliance on explicitly or implicitly discriminatory stereotypes as permissible and effective, and incentivize prosecutors to continue to employ these explanations.

C. California Courts Rarely Find *Batson* Error

Our review of California *Batson* cases revealed not only that prosecutors disproportionately use peremptory challenges to strike Black and Latinx prospective jurors, but that our state supreme court and courts of appeal rarely find that these strikes were unconstitutionally race-based. The California Supreme Court has found *Batson* error in 2.1% of the cases it reviewed in the last 30 years. The courts of appeal error rate was only 2.6% between 2006 and 2018. By contrast, the Ninth Circuit found *Batson* error in 15% of the California cases it decided between 1993 and 2019, and did so applying a much more stringent standard of review than our state courts employ.

1. The California Supreme Court’s Abysmal *Batson* Record

The California Supreme Court’s record in enforcing *Batson* is abysmal. Over a 30-year period (1989-2019), the court reviewed 142 *Batson* cases and found error only three times (2.1%).²³⁴ See Figure 5. In 2019, Justice Goodwin Liu observed that it has been “more than 30 years since this court has found *Batson* error involving the peremptory strike of a black juror.”²³⁵ As he commented and our report and numerous studies show, “Racial discrimination against black jurors has not disappeared here or elsewhere during that time.”²³⁶

California Supreme Court *Batson* Ruling Decisions

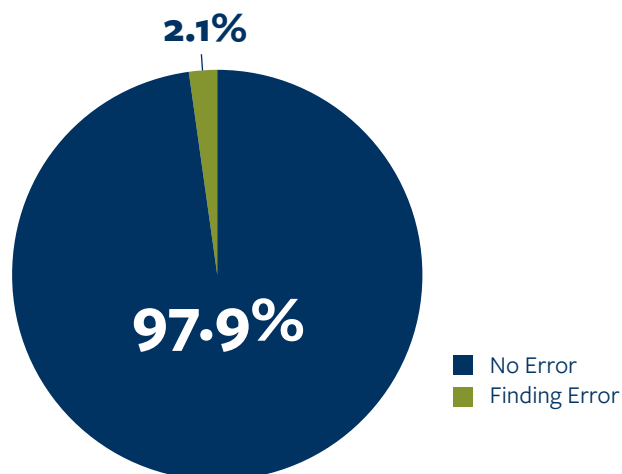


Figure 5

In Section III.E, we look closely at the opinions that produced the court's *Batson* record.

2. The California Courts of Appeal's Almost Equally Abysmal Record

The record of California's courts of appeal in *Batson* cases is only marginally better than that of the state supreme court. From January 1, 2006, through December 31, 2018, the courts of appeal issued a total of 683 opinions involving *Batson* claims. The six appellate districts found *Batson* error in only 18 cases (2.6%) and remanded three cases (0.4%) for the trial court to rehear the *Batson* motion.²³⁷ See Figure 6.

Courts of Appeal *Batson* Decisions

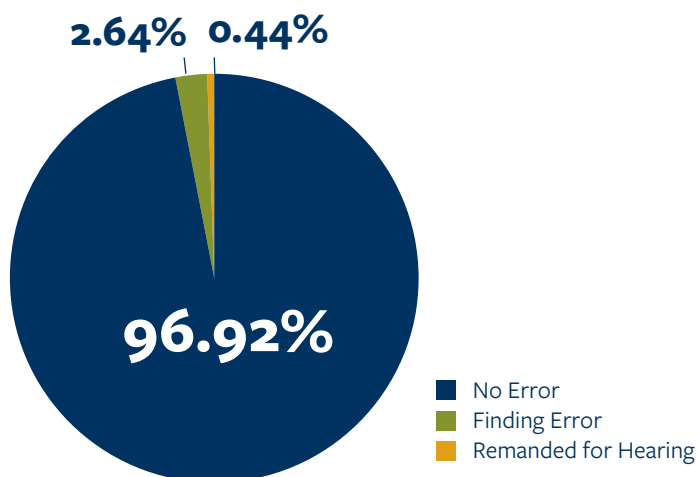


Figure 6

3. The Ninth Circuit's More Rigorous Adherence to *Batson*

The Ninth Circuit has been more willing than California appellate courts to apply *Batson* precedent and uphold the Equal Protection Clause.²³⁸ The disparity between grants of *Batson* relief in the California courts and the Ninth Circuit is notable because the circuit decided 18 of the 21 habeas cases from California under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”).²³⁹ As we explain, under the AEDPA, federal courts are extraordinarily constrained by the degree of deference they must afford to the state court decision.

Since 1993, the Ninth Circuit has found *Batson* error in 21 (15%) of the 140 cases the circuit reviewed in which relief had been denied by California appellate courts, including the state supreme court.²⁴⁰ See Figure 7. In at least two other cases, the Ninth Circuit remanded the matter to the district court for a hearing, which led to a grant of relief.²⁴¹ As discussed above, the California Supreme Court granted relief in just three of 142 *Batson* cases decided between 1989-2019. Thus, the Ninth Circuit has granted *Batson* relief over seven times as often as the California Supreme Court.²⁴²

Ninth Circuit *Batson* Ruling Decisions

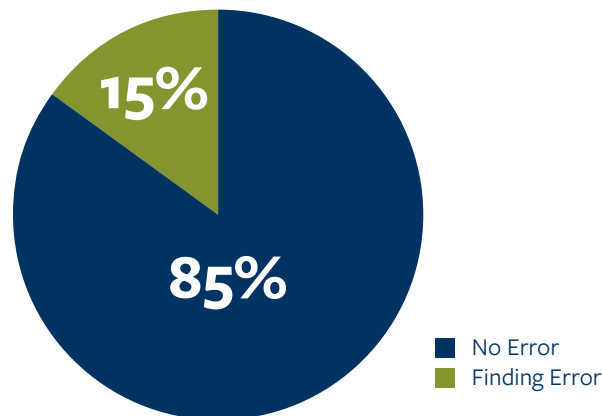


Figure 7

A defendant who has been convicted in a California court may seek relief in federal court only after the defendant has presented his or her claims in state appellate and habeas corpus proceedings.²⁴³ Because “state courts are the principal forum for asserting constitutional challenges to state convictions,” federal courts will not consider claims rejected in state court on procedural grounds or on the merits unless one of the AEDPA’s statutory exceptions applies.²⁴⁴ The federal habeas corpus statute reflects the view that “habeas corpus is a ‘guard against extreme malfunctions in the state criminal justice systems,’ not a substitute for ordinary error correction through appeal.”²⁴⁵

The AEDPA imposes a “highly deferential standard” of review.²⁴⁶ The federal court may not grant a habeas petition with respect to any claim decided on the merits in state court unless

the state court decision was: (1) “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States”; or (2) “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.”²⁴⁷ Simply put, the AEDPA permits federal courts to grant habeas relief only in cases “where there is no possibility fairminded jurists could disagree that the state court’s decision conflicts” with the precedents of the United States Supreme Court.²⁴⁸

The Ninth Circuit’s repeated disapproval of our state courts’ failure to follow *Batson*, that is, to enforce the Equal Protection Clause, is well-illustrated by its decisions involving step one of the *Batson* procedure. For example, in *Fernandez v. Roe*, California courts failed to find that there was a *prima facie* case of discrimination after the prosecutor used his peremptory strikes against four of seven Latinx jurors and the only two African-American jurors in the venire.²⁴⁹ The California Court of Appeal agreed with the trial judge that the defendant had not established a *prima facie* case because he “had not shown a ‘strong likelihood’ that the prosecutor had challenged the prospective jurors on account of their race or ethnicity.”²⁵⁰ The Ninth Circuit reversed.²⁵¹ It found that in *Fernandez* and other cases, California courts “erroneously required a defendant to show a ‘strong likelihood’ of discrimination in order to establish a *prima facie* case rather than just an ‘inference’ of discrimination as required by *Batson*.”²⁵² The circuit remanded the case for an evidentiary hearing to apply the constitutionally proper test.²⁵³

Even after the Ninth Circuit disapproved of the heightened *prima facie* standard in cases such as *Fernandez*, California courts continued to require that defendants satisfy the higher standard. At step one, defendants still had to show that “it is more likely than not” the opposing party’s strike “was based on impermissible group bias,”²⁵⁴ rather than simply raise “an inference” of discrimination as *Batson* requires.²⁵⁵ After years of insistence by California courts that the party making the *Batson* objection must meet this onerous standard, the United States Supreme Court intervened in *Johnson v. California*.²⁵⁶ It held that California’s test was an “inappropriate yardstick by which to measure the sufficiency of a *prima facie* case.”²⁵⁷ Even after *Johnson* was decided, California appellate courts, in practice, continue to require an elevated threshold at step one, contradicting clearly established federal law as determined by the high court.²⁵⁸

Below are but two examples of cases in which the Ninth Circuit, applying the AEDPA’s highly deferential standard, reversed California state court convictions for *Batson* error at step three. In *Kesser v. Cambra*, the Ninth Circuit reversed the California Court of Appeal’s decision that the prosecutor’s removal of three Native American women from the jury did not violate the Equal Protection Clause.²⁵⁹ The prosecutor offered several reasons for striking the Native American women. He described one woman as a “darker skinned female.”²⁶⁰ He expressed concern that because the prospective juror worked for a tribe, she would be more likely to identify with the culture and beliefs of the tribe than “the mainstream system.”²⁶¹ The prosecutor also described Native Americans as “resistive” and “suspicious” of the criminal justice system, and stated that “there are a whole bunch of people that violate our laws that are Native Americans.”²⁶² The state appellate court acknowledged “some degree of racial stereotyping,” but concluded that the prosecution presented sincere, nonracial reasons for striking the Native American prospective jurors.²⁶³ The California Supreme Court denied review.²⁶⁴

The Ninth Circuit in *Kesser* held that the California courts had unreasonably accepted the prosecution’s “nonracial motives as genuine” by failing to consider any “evidence outside the prosecutor’s own self-serving *Batson* testimony.”²⁶⁵ Unlike the trial court and state court of appeal, the Ninth Circuit reviewed the voir dire transcript and juror questionnaires, which “clearly and convincingly” refuted each of the prosecutor’s nonracial grounds.²⁶⁶ The comparative juror analysis revealed that the prosecutor’s “ostensibly ‘race-neutral’ reasons show[ed] themselves to be only a veneer, a pleasing moss having no depth.”²⁶⁷ The circuit court declared that “the racial animus behind the prosecutor’s strikes is clear.”²⁶⁸ The court concluded, “We cannot deny Kesser a representative jury by turning a blind eye to the prosecutor’s pretextual, make-weight justifications for his race-based strikes. . . . [S]tate courts must review the record to root out such deceptions.”²⁶⁹

More recently, in *Castellanos v. Small*, the Ninth Circuit found a *Batson* violation after a prosecutor struck four Latinx jurors.²⁷⁰ The trial court did not conduct a comparative juror analysis and found no purposeful discrimination at step three.²⁷¹ The state appellate court also did not engage in a comparative juror analysis or examine the record to determine whether the prosecutor’s reasons were pretextual.²⁷² Therefore, the Ninth Circuit conducted its own analysis of the record.²⁷³

The circuit court found that the prosecutor’s explanation that he struck a Latina juror because she had no children was pretextual for several reasons.²⁷⁴ First, the question to which the juror responded was: “Do you have adult children; if so, how many?”²⁷⁵ The prosecutor’s reason was “factually erroneous” because the prospective juror stated that she had two adult children.²⁷⁶ Second, three other jurors who did not have adult children were ultimately seated as was another seated juror who refused to answer the question.²⁷⁷ Third, the circuit court found that the prosecutor’s question was “a rather odd way of getting at what the prosecutor purportedly sought to identify,” which was whether jurors could understand young children such as the prosecution’s child witness.²⁷⁸ The Ninth Circuit held that because comparative juror analysis “reveals such significant evidence of pretext,” the California court’s finding to the contrary amounted to an “unreasonable determination of the facts in light of the evidence presented.”²⁷⁹

Despite the heightened burden and procedural hurdles in federal habeas cases, criminal defendants have been significantly more successful in the Ninth Circuit than in our state courts because of the Ninth Circuit’s willingness to more faithfully adhere to United States Supreme Court precedent.

III.

**WHY RACIAL
DISCRIMINATION
IN JURY SELECTION
PERSISTS**

As Justice Marshall presaged in his concurring opinion, the procedure the Court announced in *Batson v. Kentucky* would not be adequate to eradicate the discriminatory use of peremptory challenges.²⁸⁰ Justice Marshall identified three flaws in *Batson* that would destine it to fail. The first concerned the extent to which the requirement that the defendant make a prima facie showing would defeat *Batson*'s goal, especially in jurisdictions in which there are few Black jurors in the venire and fewer still who remain after cause challenges.²⁸¹

Second, Justice Marshall warned that prosecutors could “easily assert facially neutral reasons” when challenged for striking a Black prospective juror and that “trial courts are ill equipped to second-guess those reasons.”²⁸² Because prosecutors could so readily mask discriminatory peremptory strikes with race-neutral justifications, Justice Marshall feared that “the protection erected by the Court today may be illusory.”²⁸³

Third, Justice Marshall doubted the efficacy of the *Batson* procedure because it failed to account for prosecutors' and judges' unconscious racism.²⁸⁴ He warned, “Even if all parties approach the Court's mandate with the best of conscious intentions, that mandate requires them to confront and overcome their own racism on all levels—a challenge I doubt all of them can meet.”²⁸⁵ That is, even assuming that attorneys and judges make a good faith attempt not to use peremptory strikes in a discriminatory manner, the *Batson* procedure does nothing to ferret out the unconscious biases that infect nearly every person's decision-making. Justice Marshall further observed that prosecutors' “seat-of-the-pants instincts” about a juror, on which they often rely in exercising peremptory strikes, may “be just another term for racial prejudice.”²⁸⁶

This section explores why, 34 years after *Batson* was decided, racial discrimination in jury selection persists in California. It reveals that Justice Marshall was prescient: the flaws in *Batson* he identified in 1986 continue to cripple its efficacy today. In Section I.B, we surfaced Justice Marshall's first concern: the ongoing underrepresentation of African Americans in California jury venires. Here, we address how unconscious racism—more commonly referred to now as implicit bias—affects the exercise of peremptory challenges and judicial rulings, and contributes to the disproportionate exclusion of African Americans from juries. We also explore prosecutors' long-standing resistance to *Batson*. We show how prosecutors' frequent use of facially “neutral” reasons, such as having a negative view of the criminal legal system, exploits the different views Blacks and Whites hold due to historical and personal experiences. We investigate how California prosecutors are trained to overcome *Batson* objections by employing the very tactics Justice Marshall anticipated, e.g., “gut instincts” and ready-made lists of “race-neutral” reasons. As Justice Marshall predicted, *Batson* allows this prosecutorial behavior to continue unchecked with pernicious results. Finally, we assess the ways in which the California Supreme Court has failed to enforce *Batson*'s mandate.

A. Implicit Bias Taints Peremptory Challenges

1. Overview of Implicit Bias and Batson

“Implicit bias” is bias based on subconscious attitudes or stereotypes.²⁸⁷ Implicit biases encompass stereotypes about a range of identities, including race, ethnicity, gender, religion, body weight, and disability.²⁸⁸ This section focuses on how implicit bias affects understandings of race, particularly as it concerns African Americans.

Implicit bias, in part, explains prosecutors’ race-based strikes. Social science research has illuminated the direct impact that implicit biases have on the exercise of peremptory strikes. The results led one legal scholar to conclude that the *Batson* framework is “psychologically naïve” in its reliance on self-reporting.²⁸⁹ She explained that because of the “wide dissociative gap between what we believe our feelings to be and what they actually are,”²⁹⁰ a lawyer’s inability to assess how a “juror’s race has affected her decision to strike” also means that “she will be unable to explain it.”²⁹¹ The commentator concluded that “*Batson* rests on outdated and inaccurate assumptions about human behavior.”²⁹² These are the same assumptions Justice Marshall identified in 1986 as fatal to *Batson*’s prospects.²⁹³ It is now both unrefuted and widely acknowledged that “powerful and pervasive” implicit biases affect the exercise of peremptory challenges as well as how judges rule on the lawfulness of those challenges.²⁹⁴ The *Batson* procedure “both allows the implicit and explicit biases of attorneys to impact jury composition and may provide a false veneer of racial neutrality to jury trials.”²⁹⁵

Writing for the majority in *Batson v. Kentucky*, Justice Lewis Powell declared that “peremptory challenges constitute a jury selection practice that permits ‘those to discriminate who are of a mind to discriminate.’”²⁹⁶ His words acknowledged the “purposeful” racial bias that the Court’s three-step analysis of peremptory strikes was intended to ameliorate, if not altogether eliminate.²⁹⁷ As noted elsewhere in this report, Justice Marshall concurred in the opinion, but cautioned that the Court’s prescription “will not end the racial discrimination that peremptories inject into the jury-selection process.”²⁹⁸ Justice Marshall gave several reasons for his warning, including the following:

A prosecutor’s own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is “sullen,” or “distant,” a characterization that would not have come to his mind if a white juror had acted identically. A judge’s own conscious or unconscious racism may lead him to accept such an explanation as well supported.²⁹⁹

Well before *Batson*, social science research had documented the stereotypic association of Black Americans as violent and criminal.³⁰⁰ A year following the decision, a legal scholar wrote:

[R]equiring proof of conscious or intentional motivation as a prerequisite to constitutional recognition that a decision is race-dependent ignores much of

what we understand about how the human mind works. It also disregards both the irrationality of racism and the profound effect that the history of American race relations has had on the individual and collective unconscious.³⁰¹

Within several years, another legal scholar criticized the *Batson* inquiry on the ground that it “focused almost entirely on proof of the discriminatory state of mind of the striking party,” and could not effectuate its mandate of prohibiting all race-based discrimination.³⁰²

More than 30 years later, a wealth of empirical evidence confirms Justice Marshall’s observation that individual actors in the criminal legal system are incapable of being fully aware of their race-based biases.³⁰³ The studies leave no doubt that the “old tools of detecting racism—asking people to report on their own attitudes”—are largely ineffective.³⁰⁴ Post-*Batson* research has shown that implicit biases in the exercise of peremptory challenges are unconscious and therefore impossible to elicit from the party exercising the strike.³⁰⁵ These studies provide insight into modern understandings of racism as often subtle, unintentional, and unconscious, and offer one way to understand our empirical findings that race-based strikes persist in California courts.³⁰⁶

Implicit biases are particularly challenging to regulate because they occur when people “discriminate without intending to do so.”³⁰⁷ Simply put, “one does not have to be a Racist with a capital R . . . to harbor implicit racial bias.”³⁰⁸ Implicit bias “suggests that actors do not always have conscious, intentional control over the processes of social perception, impression formation, and judgment that motivate their actions.”³⁰⁹ These implicit biases “produce behavior that diverges from a person’s avowed or endorsed beliefs or principles.”³¹⁰ Such biases make the *Batson* framework, which depends upon the subjective judgments of the parties and judges, incapable of ferreting out invidious unconscious biases and stereotypes.³¹¹

2. A Half Century of Research on Implicit Bias

By 1954, researchers had hypothesized that racialized schemas³¹² could be activated unconsciously.³¹³ The next major breakthrough in this research was the development of the distinction between “controlled” and “automatic” information processing made by cognitive psychologists who discovered that automatic processing is “difficult to alter, to ignore, or to suppress once learned.”³¹⁴ Many studies in the following two decades demonstrated the pervasiveness of unconscious processing and found that awareness of stereotypes can manifest in social judgments and behaviors that are uncontrolled and differ from the subjects’ reported attitudes.³¹⁵

In the 1980s, research on “implicit-memory” led scholars to develop two new understandings of implicit thought development in humans: “implicit attitudes” and “implicit stereotypes.”³¹⁶ Researchers defined implicit attitudes as an evaluative disposition that “indicates favor or disfavor toward some object but is not understood by the actor as expressing that attitude.”³¹⁷

They defined implicit stereotype as “a mental association between a social group or category and a trait.”³¹⁸ Researchers then identified “implicit biases” as “discriminatory biases based on implicit attitudes or implicit stereotypes.”³¹⁹

A deeper understanding of implicit bias based on race was solidified in a groundbreaking study in 1989. In that study, researchers showed that even the preconscious presentation of racial material (material shown so quickly that the observer is not able to consciously register it) is sufficient to trigger the use of racial stereotypes.³²⁰

Development of the Implicit Association Test (IAT) in 1998 also expanded scientific understanding of the scope of implicit bias.³²¹ When respondents were asked about their “favoritism toward advantaged versus disadvantaged groups” across a dozen topics including race, gender, ethnicity, religion, and sexual orientation, 42% of respondents “expressed exact or near-exact neutrality” between advantaged and disadvantaged groups.³²² By contrast, data analysis of IAT results—the objective reality of those same respondents’ implicit or unconscious views—revealed that “only 18% of respondents demonstrated sufficiently small implicit bias to be judged implicitly neutral.”³²³ These results show that implicit biases are far more pervasive than explicit biases.³²⁴

Studies have found that implicit bias extends beyond “in-group preference,” which is defined as “favoritism toward groups to which one belongs.”³²⁵ Implicit bias establishes a general pattern of attributing positive attributes to White individuals and negative attributes to Black individuals, regardless of the race of the respondent.³²⁶ Another study using the IAT found that there is a stronger association between the word “pleasant” and European Americans than there is between “pleasant” and African Americans.³²⁷ The findings also demonstrate that there is a “greater favoritism to advantaged groups found in IAT measures than in explicit measures,” revealing that discrimination across racial groups has a higher prevalence in an individual’s implicit biases than any existing overtly racist views.³²⁸

A 2000 neurological study analyzed levels of activation in the amygdala—the area of the brain that controls fear—when participants were shown unfamiliar Black and White male faces with neutral, non-menacing expressions.³²⁹ The results revealed that White participants exhibited the highest increased levels of activation in the amygdala when presented with Black faces.³³⁰ The display of African Americans “evoke[d] differential amygdala activity” that is “related to unconscious social evaluation.”³³¹ A later social psychological study further evaluated the associative link between African Americans and fear, and found that Whites hold strong associations between race and crime and are most fearful of the risk of crime when “in the presence of black strangers.”³³² White respondents’ estimates of “victimization risk” were “heavily influenced by racial composition,” even though the study also made plain that actual crime risk is “not affected by racial composition.”³³³

3. Pervasive Implicit Bias in the Criminal Legal System and in the Exercise of Peremptory Challenges

A growing body of social science research on implicit bias focuses on the pervasiveness of implicit biases in the criminal legal system.³³⁴ The findings, confirmed by articles in peer-reviewed journals, are that “[i]mplicit biases—by which we mean implicit attitudes and stereotypes—are both pervasive (most individuals show evidence of some biases), and large in magnitude, statistically speaking. In other words, we are not, on average or generally, cognitively colorblind.”³³⁵ Much of the research has shown that implicit bias is widespread in all aspects of the criminal legal system, resulting in discrimination against both Black defendants and Black jurors by various actors, including police officers, attorneys, judges, and jurors.³³⁶

Empirical research confirms that individuals generally associate persons of color—particularly African Americans—with criminality more often than they do Whites. This association has had and continues to account for “a disproportionate amount of crime arrests” of African Americans,³³⁷ a higher likelihood of conviction when charged with a crime jurors associate with Blacks,³³⁸ and lengthier sentences for Black defendants than those imposed on comparable White defendants.³³⁹ Most of the social science research has focused on the Black-White dichotomy. However, studies examining the effects of implicit bias on other people of color have produced similar results.³⁴⁰

In a five-study publication, researchers determined that the association between African Americans and criminality is bidirectional; exposure of participants to Black male faces “lowers the perceptual threshold at which they detect degraded images of crime-relevant objects (e.g., guns and knives)” and, conversely, “exposing people to crime-relevant objects prompts them to visually attend to Black male faces.”³⁴¹ These findings demonstrate the “durability” of the association between African Americans and criminality.³⁴² In another study, researchers showed that the unconscious association of African Americans with criminality is so strong that it impacted response times in gun use against an individual viewed as a threat. Participants were quicker to “shoot” an armed Black target than an armed White target and were slower to “not shoot” an unarmed Black target than an unarmed White target.³⁴³

Implicit racial biases affect decision-making in jury deliberations, and studies have shown that racially diverse juries reduce deliberation inaccuracies and racially discriminatory decision-making. For example, a mock jury study found that racial diversity motivated White participants to contribute more fact-based, unbiased commentary during the deliberations, which reduced racial disparities in the outcomes.³⁴⁴ Another mock jury study concluded that heterogeneous groups produced higher quality deliberations in that the jurors “deliberated longer and considered a wider range of information than did homogeneous groups.”³⁴⁵ In mock jury deliberation situations in which Black participants were present, White participants raised more case facts, made fewer factual errors, and “were more amenable to discussion of race related issues” than when they deliberated in a non-diverse group.³⁴⁶

Researchers have demonstrated that implicit bias against African Americans affects jury selection, specifically influencing the exercise of peremptory challenges.³⁴⁷ For example, 28 practicing attorneys with jury trial experience, 90 undergraduate college students, and 81 law students participated in a study involving a hypothetical burglary case with DNA evidence.³⁴⁸ They were asked to assume the role of the prosecutor and to exercise their final peremptory strike against one of two prospective jurors.³⁴⁹ The juror profiles were designed to be equally unattractive to the prosecution: the first hypothetical juror had “written articles about police misconduct,” and the second hypothetical juror was skeptical of statistical evidence.³⁵⁰ Each participant responded to two different scenarios. In the first experiment, Juror #1 was Black and Juror #2 was White.³⁵¹ In the second experiment, the race of the juror profiles was switched.³⁵²

The study found that the participants’ strike decisions varied sharply by race. When the first juror—the individual familiar with police misconduct—was Black, “participants challenged him 77% of the time; this same individual was challenged just 53% of the time when he was White.”³⁵³ The second juror—the individual who was skeptical of statistical evidence, like DNA testing—was challenged “47% of the time when he was Black, compared to 23% when he was White.”³⁵⁴ Despite these disparities, participants “rarely cited race as influential, focusing instead on the race-neutral characteristics associated with the Black prospective juror,”³⁵⁵ even though the characteristics of the juror profiles remained exactly the same and only the race of the juror switched in the two scenarios. Researchers found that “a prospective juror’s race can influence peremptory challenge use and that self-report justifications are unlikely to be useful for identifying this influence.”³⁵⁶

Although not directly addressing the issue of race, research on implicit bias with respect to gender shows that explicit instructions against the use of gender in exercising peremptory strikes is ineffective in altering the effects of implicit bias on behavior.³⁵⁷ In research involving two studies, college students were asked to assume the role of a prosecutor and exercise a single peremptory challenge against one of two prospective jurors in the mock trial of a female defendant accused of killing her husband.³⁵⁸ Both studies used the same prospective juror profiles, which “included at least one characteristic that could be construed as unattractive to a prosecutor.”³⁵⁹ In the first study, “juror selection was driven by gender. Across conditions, 71% of participants chose to eliminate the female juror.”³⁶⁰ The results revealed that “jurors with otherwise identical profiles were likely to be retained when male but excused when female.”³⁶¹ In the second study, the mock prosecutors in one group were given an explicit instruction that “according to the U.S. Supreme Court, you may not decide to remove a juror because of his or her gender”; the mock prosecutors in the second group did not receive this instruction.³⁶² This warning “failed to decrease gender bias”: 59% of jurors who received the warning removed the female juror.³⁶³ Similarly, 60% of participants in the second group—who did not receive the warning—also removed the female juror.³⁶⁴ The researchers found that “warnings against bias led participants to go to greater lengths to conceal that bias.”³⁶⁵ In considering remedies for

discrimination in peremptory challenges discussed in Section IV, the authors concluded that instructing attorneys about implicit bias will not significantly reduce discriminatory peremptory challenges.

In the face of this growing body of research, California judges have expressed similar concerns about implicit biases and *Batson*'s inability to identify and preclude them. In September 2019, concurring in *People v. Bryant*, two California Court of Appeal justices announced that the "case highlights the serious shortcomings with the *Batson* framework," aligning with others "who are calling for meaningful reform."³⁶⁶ In his concurring opinion, Justice Jim Humes wrote that the *Batson* procedure, which is limited to acts of intentional discrimination, "plainly fails to protect against—and likely facilitates—implicit bias."³⁶⁷ Quoting United States Supreme Court Justice Stephen Breyer, Justice Humes explained that "it is not hard to wonder, '[h]ow . . . trial judges [can] second-guess an instinctive judgment the underlying basis for which may be a form of stereotyping invisible even to the prosecutor.'"³⁶⁸

Concurring last year in *People v. Smith*, Court of Appeal Justice Jon Streeter discussed courts' overreliance on the seating of jurors who are the same race as the struck jurors to legitimize a prosecutor's peremptory challenges.³⁶⁹ The trial court in *Smith* found a prima facie showing of discrimination based upon the prosecutor's use of peremptory challenges to strike four Black jurors.³⁷⁰ In the trial judge's view, however, the fact that one Black juror was seated and another Black juror served as an alternate constituted "'powerful evidence' supporting the credibility of the prosecutor's proffered reasons for excusing jurors."³⁷¹ Justice Streeter objected that attaching "too much significance to the prosecutor's willingness to pass the panel with one or two same-race jurors in it 'would provide an easy means of justifying a pattern of unlawful discrimination which stops only slightly short of total exclusion.'"³⁷² Justice Streeter explained that because "the Constitution forbids striking even a single prospective juror for a discriminatory purpose," the question before the trial court was whether the prosecutor's reasons for excusing the four jurors "were pretextual, not whether his decision to pass on some other juror was free of discrimination."³⁷³

Justice Streeter turned to the psychological literature demonstrating that discrimination can be "masked by a discriminator's attempt to demonstrate lack of prejudice on a prior occasion."³⁷⁴ He pointed to the same language in Justice Thurgood Marshall's opinion in *Batson* quoted at the beginning of this section as "[a]nticipating the need to apply concepts of implicit bias to the discriminatory use of peremptory challenges," as well as the influence of "[a] judge's own conscious or unconscious racism" in issuing a ruling.³⁷⁵ Thus, he wrote that the prosecutor's retention of two Black jurors, "may have been indicative of good faith, but good faith in and of itself was not the issue. Many perpetrators of discrimination are sincere."³⁷⁶

B. Prosecutors' Continued Resistance to *Batson*

Prosecutors' efforts to oppose remedies to discriminatory jury selection practices are long-standing. When the United States Supreme Court was considering *Batson*, the National District Attorneys Association ("NDAA") filed a brief in support of the state of Kentucky.³⁷⁷ The NDAA argued, "Prosecutorial peremptory juror challenges to remove . . . all members of a defendant's race is not violative of a defendant's right to be tried by an impartial jury . . . under the sixth amendment of the United States Constitution."³⁷⁸ In Justice Marshall's concurring opinion in *Batson*, he wrote that the "misuse of the peremptory challenge to exclude black jurors has become both common and flagrant."³⁷⁹ Justice Marshall referenced an instruction book used by the Dallas County, Texas District Attorney's Office, which "explicitly advised prosecutors that they conduct jury selection so as to eliminate 'any member of a minority group.'"³⁸⁰ Until 2010, the NDAA refused to adopt *Batson* as a standard. Instead, the organization recommended that prosecutors "be familiar with the decisions . . . [and] closely follow other cases that develop . . . *Batson* . . . issues."³⁸¹

Prosecutors across the country are trained in how to use peremptory strikes against African Americans and other jurors of color without violating *Batson*. A year after *Batson*, then-Philadelphia Assistant District Attorney Jack McMahon gave a videotaped training session to prosecutors in his office. He instructed them to circumvent *Batson* by thoroughly questioning Black jurors so that "you [have] more ammunition to make an articulable reason as to why you are striking them, not for race."³⁸² At a 1995 North Carolina Conference of District Attorneys training program, attendees received a one-page handout titled "*Batson* Justifications: Articulating Juror Negatives."³⁸³ It provided 10 vague reasons such as inappropriate dress, physical appearance, poor attitude, or body language.³⁸⁴ In 2004, a list of purportedly race-neutral justifications was distributed to Texas prosecutors that included suggestions such as "Watched gospel TV programs" and "Agreed with O.J. Simpson verdict."³⁸⁵ A 2005 edition of a national trial manual for prosecutors did not once refer to *Batson*.³⁸⁶ As we show below, exploiting *Batson*'s deficiencies in order to strike jurors of color is by no means restricted to prosecutors in states other than California.

C. Prosecutors Strike Black Jurors Based on Their Different Experiences with the Criminal Legal System

Consistent with other studies, our empirical research found that prosecutors often use peremptory strikes against jurors of color who hold negative views of the criminal legal system or law enforcement.³⁸⁷ The California Supreme Court has repeatedly held that these reasons are facially race-neutral, therefore sufficient to get prosecutors past *Batson*'s second step and, almost always, adequate to defeat a defense objection.³⁸⁸ Indeed, as Section III.D shows, prosecution training manuals often cite these very reasons as legally sound, "race-neutral" bases for peremptory strikes, and urge prosecutors to use them as justifications.

The effect, however, of using peremptory strikes to remove jurors who hold negative views of law enforcement or have been involved with the criminal legal system is anything but “race-neutral.” Overall, African Americans and Whites differ in their attitudes towards the criminal legal system.³⁸⁹ African Americans are more likely than Whites to view the system as racially discriminatory and unjust, and are therefore less supportive of punitive criminal justice policies.³⁹⁰ These attitudes are embedded in the nation’s long history of racial oppression, and the differential treatment of African Americans by the criminal legal system, including by members of law enforcement.³⁹¹ Moreover, because of the racially discriminatory nature of policing and mass incarceration, African-American prospective jurors are more likely to have had personal or familial involvement with the criminal legal system.

Both the reality and prosecutors’ perceptions of these differences in opinion between Blacks and Whites lead prosecutors to disproportionately—and successfully—exercise peremptory challenges against African Americans. Whether a challenge is based on a prosecutor’s sincere (though demonstrably false) belief that the criminal legal system treats everyone fairly and equally irrespective of race or the strike is simply a tactical decision to remove a prospective juror the prosecutor instinctively believes will be unsympathetic, the result is discriminatory in at least two respects. As noted (and as will be detailed presently), African Americans generally have sound reason to doubt the fairness of the criminal justice system; thus using that as a reason to eliminate prospective jurors necessarily has a disparate impact on the proportion of their representation on the jury. Moreover, the *a priori* assumption that every African American is going to be hostile to law enforcement is a paradigmatic example of “group bias”—the very evil that *Wheeler* set out to cure. Yet both prosecutors and the judges who pass on the legitimacy of their peremptory challenges continue to give credence to such biased views, consciously or unconsciously, with the result that African Americans and other persons of color continue to be eliminated disproportionately.³⁹²

1. African Americans’ Distrust of the Criminal Legal System Is Rooted in Its Racist History

When slavery was abolished, Whites turned to new methods of social and economic control. For the all-too-brief Reconstruction period (1865-77), African-American men began to gain a foothold in civil society.³⁹³ They held elected office, gained the right to vote and serve on juries, and began to establish “businesses, churches, schools and other legacy institutions.”³⁹⁴ However, the White backlash against Reconstruction’s civic reforms was brutal and swift.³⁹⁵ Though the South was defeated in the Civil War, “white supremacist ideologies continued, unbridled and disengaged from the institution of slavery.”³⁹⁶ States in the South “began to look to the criminal justice system to construct policies and strategies to maintain the subordination of African Americans.”³⁹⁷ They found inspiration in the text of the Thirteenth Amendment, which outlawed slavery and involuntary servitude “except as a punishment for a crime.”³⁹⁸ Southern states enacted “Black codes” and adopted vagrancy laws, which “essentially made it a criminal offense not to work and were applied selectively to blacks.”³⁹⁹ Once convicted, Blacks were often “contracted out as laborers to the highest private bidder” as part

of the brutal system known as convict leasing.⁴⁰⁰ Thus, the institution of slavery was revived in all but name for African Americans who were caught up in the criminal legal system.

Beginning around the turn of the century, an “epidemic of lynchings” engulfed the South; thousands of African Americans were tortured and killed.⁴⁰¹ Extrajudicial executions profoundly impacted race relations in the United States and “shaped the geographic, political, social, and economic conditions” of African Americans in ways that are still visible today.⁴⁰² Across the South, “someone was hanged or burned alive every four days from 1889 to 1929.”⁴⁰³ Most of the southern Black population had “witnessed a lynching in their own communities or knew people who had.”⁴⁰⁴

The specter of lynching reached far beyond the South. During the Great Migration, which lasted from the early 1900s through the 1970s, “some six million black southerners left the land of their forefathers and fanned out across the country for an uncertain existence in nearly every other corner of America.”⁴⁰⁵ Not only were people lynched throughout the United States, including in California, but those African Americans who left the South during the Great Migration brought with them their lived experiences and fears.⁴⁰⁶ Therefore, “a potential unintended consequence of the ‘Great Migration’ was a cultural transmission of the history of southern lynchings among African Americans” all over the country.⁴⁰⁷

The administration of the criminal law is interwoven with the history of lynching in ways that “continue to contaminate the integrity and fairness of the justice system.”⁴⁰⁸ In particular, extrajudicial lynchings in the South were increasingly replaced by state executions.⁴⁰⁹ The decline in lynchings “relied heavily on the increased use of capital punishment imposed by court order following an often accelerated trial.”⁴¹⁰ White leaders in the South “acknowledged that capital punishment could serve the same function as lynchings—the control and intimidation of African Americans.”⁴¹¹ Indeed, both White and Black Southerners viewed state executions as “legal lynchings.”⁴¹² Therefore, African Americans’ widespread opposition to capital punishment is linked to this history and to the use of capital punishment by the state as a way to replace and reinvent the racial terrorism of lynching.⁴¹³

Throughout the 20th century, the criminal legal system continued to disproportionately punish African Americans. The use of the criminal legal system as a vehicle for segregating and oppressing Blacks was far from a uniquely Southern phenomenon. On the contrary, “disparate enforcement of various laws against ‘suspicious characters,’ disorderly conduct, keeping and visiting disorderly houses, drunkenness, and violations of city ordinances made possible new forms of everyday surveillance and punishment in the lives of black people in the Northeast, Midwest, and West.”⁴¹⁴ As a result of racist laws, policing, and enforcement, Whites came to associate Blacks with crime and used that harmful stereotype to justify further discriminatory policies. “The high arrest and incarceration rates of black Americans—though based on . . . racist policies . . . served to create what historian Khalil Gibran Muhammad has called a ‘statisti-

cal discourse' about Black crime in the popular and political imagination, and this data deeply informed national discussions about racial differences that continue to this day."⁴¹⁵

As the Jim Crow regime was slowly dismantled through the gains of the Civil Rights Movement, explicitly racist calls for White supremacy and segregation were replaced by racially coded appeals to "law and order."⁴¹⁶ "Proponents of racial hierarchy found they could install a new racial caste system without violating the law or new limits of acceptable political discourse, by demanding 'law and order' rather than 'segregation forever.'"⁴¹⁷ Public figures and the media amplified paranoia about urban crime in ways that reinforced racial stereotypes. The messaging worked: "By 1968, 81 percent of those responding to the Gallup Poll agreed with the statement that 'law and order has broken down in this country,' and the majority blamed 'Negroes who start riots' and 'Communists.'"⁴¹⁸

Over the succeeding decades, mass incarceration boomed, fueled by racially discriminatory stereotypes of African-American criminality. "As law enforcement budgets exploded, so did prison and jail populations."⁴¹⁹ By the 1990s, "the Sentencing Project reported that the number of people behind bars in the United States was unprecedented in world history."⁴²⁰ Today, the "American criminal justice system holds almost 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories."⁴²¹

The present-day criminal legal system is unique not just in its massive size, but its racially discriminatory character. The statistics are dizzying: "Black men comprise about 13 percent of the U.S. male population, but nearly 35 percent of all men who are under state or federal jurisdiction with a sentence of more than one year."⁴²² One-third of Black men born in 2001 will likely be incarcerated in their lifetime.⁴²³ "Black people are incarcerated in state prisons at a rate 5.1 times greater than that of white people."⁴²⁴ In 2010, 8% of American adults had been convicted of a felony compared to 33% of Black men.⁴²⁵

Further, African Americans and Whites have significantly different experiences with law enforcement. Recent Bureau of Justice Statistics data confirm that Black Americans are "more likely to be stopped by police than white or Hispanic residents, both in traffic and street stops."⁴²⁶ Once stopped, Black drivers are "far more likely to be searched and arrested" than Whites.⁴²⁷ This is true even though police find contraband at a lower rate when they search Black drivers as compared to White drivers.⁴²⁸ "In 2016, Black Americans comprised 27% of all individuals arrested in the United States—double their share of the total population."⁴²⁹ Only 15% of children in the United States are Black, yet 35% of juvenile arrests in 2016 were of Black children.⁴³⁰ In 2015, 25% of people arrested for drug infractions were Black, despite evidence that suggests "drug rates do not differ substantially by race or ethnicity."⁴³¹

Blacks are also disproportionately the victims of police violence. In 2018, police “were twice as likely to threaten or use force” against African Americans and Latinx people than Whites during stops.⁴³² This violence can be fatal. Black men are “2.5 times more likely than White men and boys to die during an encounter with cops.”⁴³³ About one in 1,000 Black men in America will be killed by the police.⁴³⁴

The egregious racial disparities summarized here also play out in criminal case prosecutions and outcomes. Our criminal legal system continues to treat Whites and Blacks differently. For example, federal “prosecutors . . . are twice as likely to charge African Americans with offenses that carry a mandatory minimum sentence than similarly situated whites.”⁴³⁵ And state “prosecutors are also more likely to charge black rather than similar white defendants under habitual offender laws.”⁴³⁶ In addition, judges are more likely to “sentence people of color than whites to prison and jail and to impose longer sentences, even after accounting for differences in crime severity, criminal history, and education level.”⁴³⁷

2. Blacks and Whites Differ in Their Views of the Criminal Legal System

Decades of social science research confirms that African Americans and Whites differ in their views of the criminal legal system, with more Blacks consistently expressing the opinion that the system is racially discriminatory. The reasons for the divide in perception are embedded in the historic and present-day differences, described above, between how the two groups experience the criminal legal system, including their interactions with law enforcement.

Blacks consistently support the death penalty at lower rates than Whites. For example, “only around a third of blacks (36%) support capital punishment . . . compared with nearly six-in-ten whites (59%).”⁴³⁸ Scholars have further noted that “doubts about capital punishment cut across socioeconomic, political, and religious lines within the African American community.”⁴³⁹ Unsurprisingly, Blacks’ opposition to the death penalty is rooted at least in part in the historical awareness and/or lived experience that it is racially discriminatory.⁴⁴⁰ A 2015 survey revealed that “77% of blacks said that minorities are more likely than whites to be sentenced to death for committing similar crimes.”⁴⁴¹ Research confirms that, in California, African-American support for the death penalty is lower than among Whites. For example, in a 2011 survey, 45.1% of African Americans in California favored abolishing capital punishment, compared to just 25.5% of Whites.⁴⁴² Similarly, 66% of African Americans said that they preferred life imprisonment without parole over the death penalty, while 45% of Whites reported the same.⁴⁴³ Two surveys conducted in Solano County in 2014 and 2016 show a clear and consistent difference between Black and White support for the death penalty.⁴⁴⁴ In the 2016 survey, just “27% of African-American respondents supported the death penalty compared to 66% of white respondents.”⁴⁴⁵

Importantly, African Americans’ relatively higher opposition to the death penalty leads to their disproportionate removal from juries in capital cases.⁴⁴⁶ Capital juries are almost always “death qualified,” which means that prosecutors can successfully challenge for cause jurors who have reservations about the death penalty.⁴⁴⁷ Because African Americans are more likely than Whites

to oppose the death penalty, African Americans are routinely removed from capital juries before the prosecution exercises any peremptory strikes. Death qualification is yet another part of the jury selection process that contributes to the whitewashing of juries.⁴⁴⁸

Research published in 2019 showed that almost 80% of African Americans—as compared with more than 30% of Whites—consider the treatment of people of color by the criminal legal system to be a significant problem.⁴⁴⁹ Similarly, around 90% of African Americans believe that “blacks are generally treated less fairly by the criminal justice system than whites,” while only about 60% of Whites hold that view.⁴⁵⁰ A 2013 study revealed that more than two-thirds of Blacks surveyed perceived the criminal justice system as biased against Blacks, compared to just one-quarter of Whites.⁴⁵¹ These African Americans described their personal experiences with the criminal legal system—and the system itself—as “[u]nfair, illegitimate, and excessive.”⁴⁵²

These recent findings illustrating stark differences in how Blacks and Whites view the criminal legal system are consistent with social science research conducted during the past several decades. An empirical study published in 2007 found that “African Americans and Whites do not conceptualize ‘American justice’ in the same terms. Whereas Whites tend to see the scales of justice as reasonably balanced, African Americans are inclined to believe that unfairness, based on race, is integral to the operation of the criminal justice system.”⁴⁵³ Research analyzing national data collected between late 2000 and early 2001 showed that “while 74.0% of Blacks do not agree that the justice system treats people fairly and equally, only 44.3% of whites express similar sentiments.”⁴⁵⁴ The research also revealed that 61% of Blacks, compared to 26% of Whites, “do not trust the courts to give a fair trial.”⁴⁵⁵

Empirical studies from the 1990s, 1980s, and 1970s are consistent with these findings and reveal that skepticism of the criminal legal system among African Americans is not a new phenomenon. For instance, a national survey conducted in 1999 found that African Americans had less confidence in the performance of the courts than all other groups in the sample.⁴⁵⁶ Based on their research, scholars writing in 1997 similarly concluded that “African Americans see the criminal justice system as racially biased, while the majority of whites generally believe the system is racially neutral and reflects the ideal of equal treatment before the law.”⁴⁵⁷ They noted that their research “results point to a deep and persisting racial cleavage in perceptions of racial injustice.”⁴⁵⁸ In 1982, John Hagan and Celesta Albonetti published the results of a study conducted in 1977 that surveyed Americans’ views of the criminal legal system.⁴⁵⁹ “The salient finding,” they wrote, was “the persistent and often striking influence of race on the perception of criminal injustice.”⁴⁶⁰ The research showed that, even controlling for socioeconomic class, Blacks were far more likely than Whites to view the criminal legal system as unjust.⁴⁶¹

The differences between how Whites and African Americans view the fairness of the criminal legal system apply to their opinions about law enforcement. Blacks are more likely than Whites to hold negative views of the police. For example, one study found that “Blacks are three times more likely than are whites—39% versus 12.8%—to have unfavorable opinions of their local police and four times more likely—30.3% versus 7.7%—to have unfavorable views of the state police.”⁴⁶² Blacks are also less likely than Whites to say that the police do a good job of

interacting with members of their community.⁴⁶³ A 2015 literature review of 92 studies found that “individuals who identified themselves as black, non-white, or minority were more likely to hold negative perceptions and attitudes toward police as compared to whites.”⁴⁶⁴

Significantly more Whites than Blacks believe that the police in their communities treat racial and ethnic minorities equally.⁴⁶⁵ For example, according to a 2019 Pew Research Center report, “84% of black adults said that, in dealing with police, blacks are generally treated less fairly than whites. A much smaller share of whites—though still a 63% majority—said the same.”⁴⁶⁶ A similar study in 2016 found that only about one third of Blacks—compared to three-quarters of Whites—believe that their local police do a good job “treating all racial and ethnic minorities equally.”⁴⁶⁷ A 2002 survey showed that both Blacks and Latinxs were more likely than Whites to perceive the police as racially biased.⁴⁶⁸ According to the research, “three-quarters of blacks and half of Hispanics expressed that the police treated blacks and Hispanics worse than whites in their city.”⁴⁶⁹ By contrast, a vast majority of Whites (about 75%) said that “the police treated all of these groups equally.”⁴⁷⁰ This empirical data further support the findings discussed above: Blacks are more likely to view aspects of the criminal legal system negatively because they perceive the system to be racially discriminatory, while Whites are more trusting of the system because they believe it operates fairly.

Blacks are also much more likely than Whites to report that police have treated them unfairly and to report that they had a negative experience with the police. In a 2016 Pew Research Survey, nearly half of all African-American respondents (44%) reported that they had been “unfairly stopped by police because of their race or ethnicity.”⁴⁷¹ Just 9% of Whites said the same.⁴⁷² According to research published in 2010, “one of every three African Americans reported being treated unfairly by the police because of their race, whereas closer to only one of ten whites reported unfair treatment for any reason at all.”⁴⁷³ This disparity is consistent with research published in the preceding decade. For example, in 2002, 40% of Blacks reported “having been stopped by the police because of their race.”⁴⁷⁴ The same study found that 95% of Whites said that they had never been the victim of racial profiling.⁴⁷⁵

Similar fissures exist between Whites and Blacks on the issue of police use of force. In a 2016 study, 75% of Whites expressed the view that “their police do an excellent or good job when it comes to using the right amount of force for each situation” compared to just 33% of Blacks.⁴⁷⁶ Consistent with the findings cited above, this disparity has persisted for decades. For example, in a 1999 Gallup poll that surveyed Americans about police brutality in their communities, “58% of non-whites believed police brutality took place in their area, in contrast to only 35% of whites.”⁴⁷⁷

African Americans and Whites also react differently to the high-profile police killings of unarmed Black men that have garnered media attention in recent years.⁴⁷⁸ For about eight in 10 Blacks these killings “signal a larger problem between police and the black community,” in contrast to a narrow majority of Whites.⁴⁷⁹ Additionally, Blacks and Whites differ in their perceptions of protests in response to the killings. A substantial majority of Whites (85%) saw anti-police bias as a “significant reason” for such protests.⁴⁸⁰ By comparison, only 56% of Blacks shared that view.⁴⁸¹ “Blacks are also about twice as likely as whites to attribute a great deal of the motivation for the demonstrations to the desire to hold officers accountable (55% v. 27%).”⁴⁸²

In sum, Blacks are more likely than Whites to view the criminal legal system as racially discriminatory, to hold critical views of the police, and to have personally experienced negative interactions with law enforcement. African Americans are therefore more skeptical of the fundamental fairness of the administration of justice.

As a result of the view that racial bias infects the criminal legal system, African Americans are generally less punitive than Whites, who largely believe that the system operates in race-neutral and legitimate ways.⁴⁸³ Whites' support for specific criminal justice policies reflects their more punitive views. For example, a "national survey conducted between 2000 and 2001 showed that 70% of whites, in contrast to 52% of blacks, supported 'three strikes' laws that compelled life sentences for people convicted of a third serious offense."⁴⁸⁴ The same survey asked respondents whether, in some circumstances, juveniles should be tried as adults.⁴⁸⁵ A majority of Whites (60%) agreed that they should, while 46% of Blacks held that view.⁴⁸⁶

Although Whites are the victims of crime far less often than African Americans, they consistently support harsher crime policies.⁴⁸⁷ Blacks are more likely than Whites to be the victims of household burglary, motor vehicle theft, robbery, sexual assault, aggravated assault, and homicide.⁴⁸⁸ A 2018 survey found that "black adults were roughly twice as likely as whites to say crime is a major problem in their local community (38% vs. 17%)."⁴⁸⁹

Despite Blacks' greater likelihood of being crime victims, Whites are more punitive. This is because African Americans' "negative encounters with the criminal justice system and greater recognition of the root causes of crime temper their preferences for punitive policies."⁴⁹⁰ By contrast, Whites "have less frequent and more positive criminal justice contact, endorse more individualistic causal explanations of crime, and are more likely to harbor overt racial prejudice."⁴⁹¹ It is clear that racial biases—and particularly misperceptions about *who* commits crime—lead Whites to be both trusting of the criminal legal system and punitive.

The stark racial nature of the American criminal legal system has led commentators to liken it to a modern racial caste system: "the New Jim Crow" or a revival of the "peculiar institution."⁴⁹² Given both its history and its current administration, it is unsurprising that many African Americans view the criminal legal system differently—and, generally, more negatively—than Whites. That view is inarguably legitimate in light of historical and modern-day circumstances; Blacks have been targeted and persecuted by the criminal legal system in ways that Whites have not. The criminal legal system has historically treated Whites and Blacks unequally and continues to do so. In the context of jury selection, however, prosecutors and judges do not treat these two viewpoints—though both are grounded in history and lived experience—equally. Rather, our study shows that prosecutors in California continue to use peremptory strikes against Black jurors based on both their perceived distrust of the criminal legal system and the specific reality of their negative experiences with that system. Our courts continue to approve the legitimacy of these strikes. As this report demonstrates, the *Batson* framework, which requires a showing of purposeful discrimination, never had the capacity to remedy these entrenched racial disparities and has most assuredly failed to do so.

D. Training Manuals Instruct Prosecutors to Conceal Race-Based Strikes

Prosecutor training is likely a key driver of California prosecutors' disproportionate removal of Black and Latinx prospective jurors through the exercise of peremptory challenges. Indeed, our review of district attorney training materials from 15 counties in California between 1990 and 2019 demonstrates that the *Batson* regime has failed in this state for the very reasons Justice Marshall predicted in his concurring opinion.⁴⁹³ The training of prosecutors—as evidenced by these documents—all but ensures the continuation of the pernicious legacy of racial discrimination in jury selection in several ways. First, the materials teach prosecutors to select an “ideal juror” prototype that, explicitly or implicitly, directs them to strike Black jurors and other jurors outside of their “in-group.” Second, they instruct prosecutors to rely on their gut in deciding whether to dismiss jurors, belying decades of empirical research demonstrating that implicit biases fuel intuitive or instinctive decisions.⁴⁹⁴ Third, the materials are a playbook for contravening *Batson*. They include tips for concealing implicit and explicit bias through extensive, ready-made lists of “race-neutral” reasons for striking Black jurors and provide trial tactics to avoid the appearance of racism.

At their core, the materials instruct prosecutors to strike jurors based on “group bias,” precisely the stereotypical reasoning the California Supreme Court prohibited in *People v. Wheeler*.⁴⁹⁵ The court defined group bias as the assumption that certain jurors are biased merely because they are members of an identifiable group.⁴⁹⁶ *Wheeler* held that exercising a peremptory challenge based on “group bias” violates the state constitutional right to trial by a jury drawn from a representative cross-section of the community.⁴⁹⁷ The court declared, “Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.”⁴⁹⁸

The United States Supreme Court in *Batson* and subsequent opinions also condemned group bias in jury selection. In *Batson*, the Court stated, “Competence to serve as a juror ultimately depends on . . . individual qualifications and ability impartially to consider evidence presented at a trial.”⁴⁹⁹ Later, in *J.E.B. v. Alabama ex rel. T.B.*, the high court observed that reliance on a juror’s membership in a group as a proxy for competence or impartiality “‘open[s] the door to . . . discriminations which are abhorrent to the democratic ideals of trial by jury.’”⁵⁰⁰

Training prosecutors to rely on group characteristics such as occupation, age, marital status, or education allows prosecutors (consciously or unconsciously) to use those characteristics as proxies for race based on the characteristics’ implicit or explicit association with race.⁵⁰¹ For example, the manuals do not direct prosecutors to inquire about how a prospective juror’s occupation has influenced the juror’s views about issues relevant to the case on trial.⁵⁰² Rather, stereotypes about how an individual who has a given profession or occupation would sympathize with a defendant or distrust the prosecution serve as the basis for a peremptory challenge.⁵⁰³ Striking the juror simply *because* he is a social worker and might work or identify with Black communities, without evidence of specific bias towards the defendant or against the prosecution, constitutes the very group bias *Batson* and *Wheeler* condemned.⁵⁰⁴

1. Identifying the “Ideal” Prosecution Juror

An Orange County training document explains: “The law says we want 12 fair and impartial jurors” but “[i]n reality, if we had our choice, we would pick 12 biased jurors in our favor.”⁵⁰⁵ Thus, prosecutors must “ferret out [jurors’] biases and then select the jurors who are most biased for us.”⁵⁰⁶

Prosecutors are instructed explicitly and implicitly to preference jurors who are most demographically similar to themselves. The first question many of the materials pose is: Who is the ideal juror for your case? *Ned’s Compleat [sic] Voir Dire Manual*, a publication by New Prosecutor’s College used in San Diego County, states that a “Prosecution Jury” will include people who “have a stake in the community,” “homeowners,” and people who “have children in the home” and “can work together” with other people in “‘committee-like’ environments.”⁵⁰⁷ It also includes a list of “GOOD PEOPLE,” consisting of “middle class, middle aged homeowners,” people with a “steady job,” and “persons with traditional lifestyles.”⁵⁰⁸ Likewise, one Orange County directive “on whom to excuse” states that “Good” jurors are “attached to community, educated, stable, [and] professionals.”⁵⁰⁹ Other Orange County materials explain that the ideal prosecution jurors “Have a Stake in the Community,” “Can Work Together,” are “Mature Individuals,” “Respect the System,”⁵¹⁰ and are “Normal, regular people.”⁵¹¹

On the other hand, training documents advise prosecutors against accepting certain types of jurors. For example, a Ventura County trainer is “very cautious about . . . people who are marginalized by societal norms.”⁵¹² *Ned’s Compleat [sic] Voir Dire Manual* lists “BAD PEOPLE,” who are defined as those who are “unusual or weird,” have themselves or their family members had “previous arrests or convictions . . . for the same/similar offense,” or have “occupations sympathetic to defendants.”⁵¹³

Nearly all of the training materials emphasize that *Batson* permits prosecutors to base their strikes on membership in groups in which African Americans are overrepresented, e.g., “less educated” people, “blue collar workers,” and both “ex-felons” and relatives of those who are incarcerated.⁵¹⁴ The message is that if a prosecutor relies on characteristics that are facially neutral but in fact apply disproportionately to members of a protected group, they will survive a *Batson* objection.⁵¹⁵ Directing prosecutors to use non-cognizable group labels encourages them to evade accountability under *Batson* for discriminatory peremptory challenges.

Using employment status as a basis for a peremptory challenge disproportionately excludes Black and Latinx jurors. Between 1954 and 2013, “the unemployment rate for blacks has averaged about 2.2 times that for whites,” varying between 2.77 at its highest and 1.67 times higher at its lowest.⁵¹⁶ According to a review of multiple studies conducted between 1989 and 2015, “[o]n average, white applicants receive 36% more callbacks than equally qualified African Americans . . . representing a substantial degree of direct discrimination. White applicants receive on average 24% more callbacks than Latinos.”⁵¹⁷ Compared to White men, Black and Latino men are less likely to be called for interviews for low-wage jobs based on their resumes,

to be hired, and to be offered a job involving customer service.⁵¹⁸ While more than half of Americans experience some period of poverty, 84% of African Americans “spend at least a year in poverty over their lifetime.”⁵¹⁹

The characteristics of the “ideal juror” are all but identical to those of most prosecutors. Almost by definition, prosecutors are well-educated, have stable employment and strong community ties, and are predominantly White. In California in 2015, 69.8% of prosecutors were White and only 5.8% of prosecutors were Black, although Whites constituted only 38.5% of the population.⁵²⁰ In 2018, the national average salary for entry-level prosecutors was \$56,200, and was \$84,400 for prosecutors with 11 to 15 years of experience.⁵²¹ In California, district attorneys’ salaries are significantly higher than the national average. For example, an entry-level district attorney in Tulare County earns between \$62,277 and \$75,899 annually⁵²² and the majority of managing deputy district attorneys in Riverside County have an annual salary of \$214,649.26.⁵²³

Social psychologists have demonstrated the tendency for people, especially Whites, to show “implicit preferences for groups with higher social status [such as Whites,] to groups with lower social status.”⁵²⁴ Specifically, social scientists have shown that individuals display “implicit in-group favoritism,” a phenomenon whereby “people automatically associate the in-group, or ‘us,’ with positive characteristics, and the out-group, or ‘them,’ with negative characteristics.”⁵²⁵ As of 2005, “nearly one hundred studies” had demonstrated the effects of “ingroup favoritism.”⁵²⁶ For example, people “judge same-group members more positively, see and describe failures as situational rather than dispositional, overrate achievements considerably, [and] punish more leniently.”⁵²⁷ Both conscious and implicit bias in favor of in-groups do not develop because of “invidious dislike of the outgroup, but rather ‘because positive emotions such as admiration, sympathy, and trust are reserved for the ingroup.’”⁵²⁸

Thus, prosecutorial training embraces in-group favoritism towards White jurors explicitly through the typology of an “ideal juror.” The training also does so implicitly by validating trust and respect for those in the in-group.

2. Racial Stereotyping by Reliance on “Gut Instincts”

District attorney trainings direct prosecutors to trust their gut reactions when exercising peremptory challenges. The training materials are replete with reminders that a mere hunch is a sufficient basis for a strike. For example, Monterey County uses a jury selection worksheet emblazoned with “FOLLOW GUT INSTINCTS” in large capital letters.⁵²⁹ San Diego County prosecutors are told to “go with your gut.”⁵³⁰ Orange County prosecutors are instructed that when watching jurors’ body language: “GO WITH YOUR GUT INSTINCTS !!,”⁵³¹ “ALWAYS, ALWAYS--TRUST YOUR INSTINCTS,”⁵³² and do not “ignore your personal reaction to a prospective juror.”⁵³³ Specifically, they are directed: “If you have a vague feeling that there is something wrong about a prospective juror, don’t gamble.”⁵³⁴ Ventura County tells its prosecutors: “When in doubt, Kick ‘em Out (don’t let your intellect get in the way of your instincts).”⁵³⁵ The same materials instruct prosecutors that “gut instincts mean everything in jury selection.”⁵³⁶ Unsurprisingly, absent from every training manual is any discussion of how “gut instinct” is influenced by unconscious racial biases.

Gut reactions, which have been central to prosecutorial training for decades, are now recognized as quintessential opportunities for individuals to act based upon unconscious biases.⁵³⁷ Psychological research has demonstrated that the goal of our unconscious thinking system “is to detect patterns in the environment as quickly as possible and to signal the person as to whether they are good or bad.”⁵³⁸ One type of unconscious, “automatic thinking is the tendency to categorize and stereotype.”⁵³⁹ Once learned, stereotypes are applied “non-consciously, unintentionally, uncontrollably, and effortlessly.”⁵⁴⁰ Researchers have found that decision-makers increase their use of stereotypes when they have a strong motivation to “predict the behavior of a person[,] . . . ‘time pressure, a need for closure, [and] moderate cognitive load.’”⁵⁴¹ Thus, attorneys exercising peremptory challenges under the constraints of trial are particularly susceptible to the use of stereotypes in the exercise of peremptory strikes.

Prosecutors are no different from the general public; even when they condemn overt racism, implicit biases—most often associating African Americans with negative views—remain key components of their decision-making.⁵⁴² The activation of implicit biases is such an automatic reaction that prosecutors may not even realize they are relying on race-based stereotypes in their choices.⁵⁴³ Instead, they are likely to interpret evidence as supporting their gut reaction—e.g., if there are Blacks on the jury, the jury is more likely to fail to agree on a verdict.⁵⁴⁴ This is because “once a correlation is learned, the nonconscious system tends to see it where it does not exist, thereby becoming more convinced that the correlation is true.”⁵⁴⁵ As soon as a prosecutor categorizes a prospective juror into a group, the prosecutor will “tend to remember the person’s behaviors that are associated with that group.”⁵⁴⁶

Decisions based upon demeanor and appearance are highly susceptible to implicit bias.⁵⁴⁷ As Justice Marshall wrote in *Batson*, “A prosecutor’s own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is ‘sullen,’ or ‘distant,’ a characterization that would not have come to his mind if a white juror had acted identically.”⁵⁴⁸ Yet, prosecutors are explicitly taught to select the “ideal jury” through the observation of jurors’ nonverbal cues as well as their answers to questions. The training documents encourage prosecutors to note jurors whose body language they deem “Hostile,” “Defensive,”⁵⁴⁹ “Unfriendly” or if the juror demonstrates an “unwillingness or inability to interact with other jurors.”⁵⁵⁰ One training manual instructs prosecutors that “[t]he way a juror is dressed should give you some idea as to whether or not he or she is a conformist. It should also give you a clue as to how seriously he or she takes jury duty.”⁵⁵¹ An Orange County training document states even more directly that “Dress and grooming can telegraph a juror’s conformance with social norms” and “Race, religion, gender, socioeconomic status and culture all have their own nonverbal markers.”⁵⁵² Another training guide instructs prosecutors to “[p]ay attention to the physical, non-verbal responses. ‘Body language’ is very telling.”⁵⁵³ More pointedly, a San Diego County deputy district attorney instructed her colleagues to “Watch [the jurors] whenever and wherever you can. Locate the loners, big mouths and losers; then execute them.”⁵⁵⁴

“[S]ocial psychological research strongly supports the conclusion that . . . [w]hen a lawyer sees a potential juror, she will almost instantaneously categorize that person . . . on the basis of race.”⁵⁵⁵ This categorization activates stereotypes, not necessarily consciously, so that the

lawyer will assign the stereotypical attributes to the potential juror.⁵⁵⁶ Even if she is not aware of the stereotypes and even if she does not believe them, she will “search for, and pay greater attention to information that confirms her expectations.”⁵⁵⁷ Then, “she will encode the information in a different way, and recall it more easily.”⁵⁵⁸

Other research, as discussed in Section III.A, demonstrates that individuals are more likely to associate ambiguous behavior as aggressive when exhibited by a Black person.⁵⁵⁹ Police officers have been found to “interpret ambiguous behaviors performed by blacks as suspicious [and criminal] . . . while similar behaviors engaged in by whites would go unnoticed.”⁵⁶⁰ Another study found that both Black and White students considered “relatively innocuous” acts by Black males as “more threatening than the same behaviors by white males.”⁵⁶¹ Legal scholars have interrogated the pervasive stereotype of the “Angry Black Woman” as one who is “out of control, disagreeable, overly aggressive, physically threatening, loud (even when she speaks softly), and to be feared.”⁵⁶² This scholarship all but draws a direct line between prosecutors’ reliance on body language, facial expressions, or eye contact and racially discriminatory strikes. As Section II.B.1 shows, on a case-by-case basis, California prosecutors use demeanor-based reasons more often than any other explanation when exercising peremptory challenges against Black and Latinx jurors.

Prosecutors’ implicit biases can also negatively impact their treatment of Black jurors, causing a Black juror to appear uncomfortable. For example, when a prosecutor questions Black prospective jurors, the interaction “might activate any of these negative stereotypes as well as more general negative implicit attitudes” causing the prosecutor to “project this negativity through body language and gestures.”⁵⁶³ This could, in turn, “cause jurors to avoid eye contact, provide awkward or forced answers that make the juror appear less intelligent, or simply fidget and look nervous.”⁵⁶⁴

While the empirical evidence demonstrates that demeanor- and appearance-based reasons for striking a juror often are proxies for race or race and gender, these explanations are insulated from scrutiny under *Batson* because courts almost always find them to be facially neutral.⁵⁶⁵ For example:

A prosecutor looking for “deferential” jurors might interpret a venire woman’s words as “aggressive,” but interpret the same words stated in the same way by a man merely as “assertive,” or perhaps not even notice the words at all. The prosecutor remembers this evaluation, rather than simply the words themselves, and might therefore strike the woman from the venire. But for the potential juror’s gender, the prosecutor would not have exercised the strike.⁵⁶⁶

Even though the prosecutor unconsciously struck the juror based on her gender, a court would be unlikely to find a violation because the prosecutor “subjectively believes that she struck the juror because she was too aggressive, which is a gender-neutral reason.”⁵⁶⁷ The cases in which courts have held that demeanor- and appearance-based reasons are proxies for race are few and far between.⁵⁶⁸ It has been almost 20 years since the California Supreme Court has discredited a prosecutor’s demeanor- or appearance-based reason.⁵⁶⁹

Only one court has addressed these pretextual explanations. Washington Supreme Court General Rule 37 makes it more difficult for courts to credit demeanor-based reasons for “peremptory challenges [that] have historically been associated with improper discrimination in jury selection.”⁵⁷⁰ For example, if a party strikes a juror because he was “inattentive,” “exhibited a problematic attitude, body language, or demeanor[,] or provided unintelligent or confused answers[,]” the opposing counsel or judge must corroborate the observation or the court will reject the reason for the strike.⁵⁷¹

Consistent with the data presented in Section II.B, as long as *Batson* remains the procedure in California, prosecutors will continue to offer reasons for striking Black jurors based on their “Gut instinct” about jurors’ demeanor, body language, clothing, and hairstyle.⁵⁷² Courts will continue to sanction those explanations. Continued reliance on these rationales validates Justice Marshall’s warning that “‘seat-of-the-pants instincts’ may often be just another term for racial prejudice.”⁵⁷³

3. Reliance on Stock “Race-Neutral” Reasons and Other Tactics that Facilitate Discriminatory Strikes

District attorney training materials combine “practical tips”⁵⁷⁴ from *Batson* case law with encyclopedias of stock, court-approved “race neutral”⁵⁷⁵ reasons and so-called proven strategies aimed at avoiding “the *Wheeler* problem.”⁵⁷⁶ For example, a 2019 Orange County training document offers practical tips to prosecutors: (1) keep a member of a cognizable group on the jury if possible and (2) give multiple reasons for each challenge.⁵⁷⁷

Prosecutors are directed to rely on their biases, both explicit and unconscious, in deciding which jurors to strike, but to conceal them by offering judicially sanctioned “race-neutral” reasons.⁵⁷⁸ Los Angeles County goes so far as to tell its prosecutors to “bite your tongue” if their reasons for excusing a juror “sound bogus or pretextual.”⁵⁷⁹ Similarly, a California District Attorneys Association (“CDAA”) publication states that “any justification that even hints at racism must be avoided . . . ; if it sounds at all offensive, do not say it.”⁵⁸⁰ The lesson: Racism—whether it is conscious or unconscious—is acceptable as long as you do not place it on the record.

Prosecutors’ exhaustive lists of go-to reasons enable them to readily produce a “race-neutral” response to any imaginable *Batson* objection. For example, a Los Angeles training manual directs: “Take to court a list of acceptable justifications which have been affirmed on appeal.”⁵⁸¹ The CDAA advises prosecutors to offer “quotations where it would be most useful to know and emulate particular language that has been deemed proper.”⁵⁸² The manual *Mr. Wheeler Goes to Washington* includes a section titled “*Wheeler* Words That Work: A Primer on Providing Peremptory Challenge Justifications.”⁵⁸³ It lists 16 race-neutral reasons for dismissing jurors and an additional 18 demeanor-based explanations so that prosecutors can “give detailed verbal expression to . . . subjective instincts.”⁵⁸⁴ For each of these reasons, the manual provides extensive citations to opinions in which a reviewing court upheld the reason as race-neutral.⁵⁸⁵ The manual explains that the “key attribute [from a case] is noted in boldface,” presumably so that the prosecutor can easily identify a facially neutral reason to strike the juror.⁵⁸⁶

The *Inquisitive Prosecutor's Guide* lists 77 race-neutral reasons for striking a juror.⁵⁸⁷ The list of race-neutral justifications encompasses over a fifth of the entire guide, consisting of almost 30 single-spaced pages.⁵⁸⁸ This list instructs that a prosecutor may use both the fact that a prospective juror had too much or too little education as a race-neutral reason to strike a juror.⁵⁸⁹ A prosecutor may strike a juror for lack of community or family ties or too many of those relationships.⁵⁹⁰ And a prosecutor may excuse a prospective juror for having previously served on a hung jury or on a jury that acquitted, or because they never served on a jury.⁵⁹¹ The list aptly illustrates Justice Powell's observation in *Batson* that "peremptory challenges . . . permit—those to discriminate who are of a mind to discriminate."⁵⁹²

Some counties distribute a two-page document entitled the "*Wheeler/Batson* Guide," written by an Orange County deputy district attorney, which appears to be intended for use as a quick reference during jury selection.⁵⁹³ The first page lists the seminal cases, the *Batson* procedure, and other important aspects of the doctrine.⁵⁹⁴ The second page lists each cognizable group, non-cognizable groups, and 32 race-neutral justifications.⁵⁹⁵ Similar to other lists, this document reduces the case law into quick-reference group characteristics. This enables the prosecutor—without the need for any reflection on the competence of the individual as a prospective juror—to select a court-approved, race-neutral reason from the list when facing a *Batson* objection.

Although they can function as cover for purposeful discrimination, reliance on these pre-approved lists of race-neutral reasons does not necessarily mean that a prosecutor's strike is intentionally racist. Rather, the lists allow district attorneys to act based upon on their gut reactions, "often reflecting an attorney's own unconscious stereotypes."⁵⁹⁶ It offers prosecutors an easy pick of facially nonracial reasons for the strike, including a "reason [that] may be covering for implicit bias."⁵⁹⁷ As a result, "[t]he remaining jurors are likely to be those who the attorney believes fit a favorable stereotype."⁵⁹⁸

Although the first of the Orange County strategies perversely directs prosecutors to explicitly consider race in selecting juries in order to defeat *Batson* challenges, it has been widely employed. In 2006, the CDAA instructed: "If possible, keep on the jury one or more members of each cognizable group from which you are challenging persons" to "create a record that will justify any challenges you make."⁵⁹⁹ That advice was already perceived wisdom among prosecutors; in 1988, a San Diego trainer wrote, "I personally favor having a defendant being told by members of his own race rather than from some other race, that they disapprove of his conduct and that they would like to see him in the state prison. So, I try never to have a jury that does not have at least one person that is a member of the defendant's race."⁶⁰⁰

This is, of course, simply racial discrimination in another form. It also is directly contrary to the United States Supreme Court's decision in *Miller-El II*. There, 11 African Americans remained on the panel after jurors were excused for cause or by agreement.⁶⁰¹ The prosecutor struck 10 of the Black prospective jurors, but made a "late-stage decision to accept a [Black] panel member willing to impose a death sentence."⁶⁰² The Court called the move an effort "to obscure the otherwise consistent pattern of opposition to seating" Black jurors.⁶⁰³ But while the Supreme Court was not fooled by this transparent effort at violating *Batson* without facing

the consequences, California courts have too frequently sanctioned this tactic and held that the inclusion of one or more members of the protected group is persuasive evidence that no discrimination occurred.⁶⁰⁴

Often, instructional materials encourage district attorneys to offer *many* race-neutral reasons for striking a juror. For example, an Alameda County training document directs prosecutors to “be certain to state all the reasons for your challenge, beyond what is stated in your written notes.”⁶⁰⁵ Another Alameda training instructs: “Prosecutors need to give a full explanation of the reasons for their challenges. . . . One of the reasons for this thoroughness is comparative juror analysis.”⁶⁰⁶ Orange County—on a slide discussing comparative analysis—urges prosecutors, “Don’t just state a single reason, but give all applicable reasons.”⁶⁰⁷ The Ventura County District Attorney’s Office directs prosecutors to:

try to show that excused panelists in the alleged subject group had similar characteristics to other excused panelists or that you had a non-discriminatory reason for excusing the juror. Do not assume one justification will suffice. Case law indicates there is strength in quantity. One should not fail to mention any justification because it seems trivial.⁶⁰⁸

The underlying assumption is that if a prosecutor offers many reasons, when a trial or appellate court conducts a comparative juror analysis, the court will be less likely to view the struck and seated jurors as similar.⁶⁰⁹ A San Francisco County manual states, “If you develop multiple reasons, any one reason susceptible to comparative analysis will not be found wanting on pretextual grounds in light of the other reasons.”⁶¹⁰ The more justifications on the record that demonstrate dissimilarity between the two groups, the higher the chance that the judge will overrule the *Batson* motion.⁶¹¹

However, the United States Supreme Court has criticized the prosecution’s use of “a laundry list of reasons” to justify a strike.⁶¹² The California Supreme Court initially expressed concern that the “laundry list” approach “carries a significant danger,” noting that a “prosecutor’s positing of multiple reasons, some of which, upon examination, prove implausible or unsupported by the facts, can in some circumstances fatally impair the prosecutor’s credibility.”⁶¹³ However, the state supreme court has not found *Batson* error when prosecutors employed this strategy in striking jurors.⁶¹⁴

The training materials compile lists of other ways to avoid *Batson* challenges. For example, the CDAA suggests strategies such as the following: (1) “using [a] juror questionnaire to avoid [a] claim of disparate questioning”;⁶¹⁵ (2) making “notes of demeanor attributes, looking for differences between those of potential challenges and potential keepers”;⁶¹⁶ (3) giving “a detailed verbal expression to such subjective instincts,” which can be accomplished by using the 18 “acceptable attributes for demeanor challenges”;⁶¹⁷ and (4) using “tactical voir dire dynamics reasons” such as the “desire to seat more favorable-looking members of the venire.”⁶¹⁸

The organization also advises district attorneys to “always kick off your most hateful juror earliest in the process, before your opponent has built up enough steam to make a successful *Wheeler* challenge.”⁶¹⁹

Batson may have reduced explicit directives in prosecutorial training materials to striking Black prospective jurors, other jurors of color, and women. However, as Justice Marshall predicted, *Batson* failed to account for implicit bias and the ease with which prosecutors would find work-arounds for excusing Black jurors. The training materials' reliance on ready-made, race-neutral, and judicially approved reasons should leave no doubt that California courts will not put an end to prosecutors' long-standing practice of using peremptory challenges to remove Black prospective jurors.

E. The California Supreme Court's Resistance to *Batson*

Certainly, credit goes to the California Supreme Court for its *Wheeler* opinion in 1978, adopting measures to reduce peremptory challenges motivated by group bias almost a decade before the high court's decision in *Batson*.⁶²⁰ The state supreme court's ambition, however, was short-lived.

Beginning in the late 1980s, in almost every significant post-*Batson* decision, a majority of the California Supreme Court took a wrong turn. As this section shows, the court did so over the objections of dissenting justices as well as criticism by the Ninth Circuit. Rather than acknowledge the flaws in the *Batson/Wheeler* procedure, the majority disregarded them. For instance, when, more than a decade ago, the United States Supreme Court began to issue opinions calling upon lower courts to enforce *Batson* more rigorously, our state supreme court balked. Thus, in three decades, the California Supreme Court has all too often selected the course least likely to restrain prosecutors' use of discriminatory peremptory challenges, least likely to ensure trial court accountability, and most likely to produce one affirmance after another. Though it is by no means an all-inclusive account of the shortcomings in the court's *Batson* precedents, this sub-section serves to elucidate the course the state supreme court has pursued.

As noted in Section II.C.1, over a 30-year period (1989-2019), the court reviewed 142 *Batson* cases and found error only three times. The first two of the three reversals were in death penalty cases.⁶²¹ In these first two cases, decided in 1991 and 2001, the prosecutors' intentional removal of jurors of color through their peremptory challenges was patent. In *People v. Fuentes*, the first reversal, the prosecutor was found to have violated *Batson* only "a few months earlier," and then used "[t]en of his first 11 challenges" to remove Black jurors, leading one judge to remark that the prosecutor had "failed—or refused—to learn his lesson."⁶²² In the second case, *People v. Silva*,⁶²³ "the prosecutor, believing that the jury in the first trial had 'hung . . . on racial grounds,' struck all five Hispanic members of the venire and all but announced his desire not to have any Hispanic person serve on the second jury."⁶²⁴

In *People v. Gutierrez*, a non-capital case and the third reversal, the court granted a *Batson* claim for "the first time in 16 years, and the second time in over 25 years."⁶²⁵ The opinion stands out because it is difficult to distinguish the circumstances in *Gutierrez* from the many cases in which the court found no error, some of which we discuss in this section of the report. The court did not overrule its precedent; it simply looked past it. At the time of the *Batson* objection, the prosecutor had used 10 of 16 strikes to remove Latinx prospective jurors.⁶²⁶ The seated jury included

one Latino.⁶²⁷ The majority did not disapprove of its policy of “reflexive application of deference” (discussed in this section) to unexplained trial court rulings.⁶²⁸ Rather, the court pointed to the inadequacy of the trial judge’s ruling as one of the factors in its decision to scrutinize the prosecutor’s peremptory challenge.⁶²⁹ The majority found that the trial court “never clarified why it accepted [the prosecution’s explanation] as an honest one” and had made a “global finding” that the prosecutor’s reasons did not appear “to be a pretext in this particular case.”⁶³⁰ Taking a page from Justice Liu’s critical analyses of the court’s *Batson* jurisprudence (discussed in this section), the majority, in this anomalous case, found error, concluding it was not satisfied that the trial judge had “made a *reasoned* attempt to determine whether the justification was a credible one.”⁶³¹

1. Elevating *Batson*’s Step-One Low Threshold to an Unconstitutional Burden

As discussed in Section I.C.5, in 2005, in *Johnson v. California*, the United States Supreme Court declared that California’s step-one test was unconstitutional because it imposed an undue burden on the party making the *Batson* objection.⁶³² The California Supreme Court last found a *Batson* violation at the first stage in 1986, more than 30 years ago.⁶³³ To put this in perspective, it is quite likely that in thousands of California trials, judges improperly refused to require prosecutors to give reasons for their strikes, and in hundreds of appellate cases, reviewing courts improperly short-circuited *Batson* claims. Over the decades, the court’s majority deflected criticism from dissenting justices and repeated admonitions by the Ninth Circuit that it had gone off course.⁶³⁴ For example, in 1992, Justice Joyce Kennard took issue with the majority’s view that the prosecutor’s strikes against the only two Black prospective jurors was a “meager” prima facie showing.⁶³⁵ Consistent with Justice Thurgood Marshall’s warning in *Batson*, Justice Kennard declared that when there is a small number of African Americans in the venire, the prosecutors’ removal of “all the African-American jurors who were tentatively seated” is sufficient for a prima facie showing.⁶³⁶ Justice Kennard wrote, “To hold otherwise would improperly sanction the use of racially motivated challenges when only one or two members of the targeted race are present in the venire.”⁶³⁷

*People v. Carasi*⁶³⁸ is one of several cases that illustrate the state supreme court’s tenacious application of an elevated standard at step one, notwithstanding *Johnson* and the court’s subsequent acknowledgement that the prima facie showing involves only a “low threshold.”⁶³⁹ In the 2008 opinion, the court independently applied the *Johnson* test to a *Batson* claim arising out of a case tried before *Johnson*.⁶⁴⁰ The majority found that the prosecutor’s use of 20 of his 23 peremptory challenges against women prospective jurors was insufficient to raise an inference of discrimination.⁶⁴¹ Justice Kennard wrote separately to object to the majority’s dismissal of the overwhelming statistical evidence, especially in a trial in which the co-defendant was a woman.⁶⁴² She pointed to the trial judge’s observation that the percentages of the prosecutor’s challenges against women were “eyebrow-raising, to say the least,” a comment the majority never mentioned.⁶⁴³ Justice Kennard stated that had the pattern been “the only evidence on this issue,” she would have found a prima facie showing of discrimination.⁶⁴⁴ Her assessment was in line with *Johnson*’s reaffirmation that satisfying step one requires only “producing evidence” of an inference of discrimination.⁶⁴⁵

At the end of 2019, in *People v. Rhoades*, Justice Liu criticized the majority's "latest steps on what has been a one-way road" that "improperly elevated the standard . . . beyond the showing that the high court has deemed sufficient to trigger a prosecutor's obligation to state the actual reasons for the strike."⁶⁴⁶ The prosecutor in *Rhoades* peremptorily challenged four of eight Black prospective jurors, thereby stripping the jury box of all African Americans.⁶⁴⁷ Justice Liu commented on the similarity between the facts in *Rhoades* and *Johnson v. California*.⁶⁴⁸ In *Johnson*, even applying the unconstitutionally burdensome "strong likelihood" standard at step one, the trial court observed that the showing was "very close," and the state supreme court agreed that the prosecutor's removal of all three Black prospective jurors from the jury "certainly looks suspicious."⁶⁴⁹ The circumstances in *Rhoades*, Justice Liu submitted, were sufficient for the majority to have found an inference of discrimination under the standard mandated by *Johnson*.⁶⁵⁰

Justice Liu remarked that in the 14 years since *Johnson*, the California Supreme Court had decided 42 cases involving *Batson*'s first step, all of them capital cases.⁶⁵¹ Although each case was tried before *Johnson*, when California trial courts were applying the heightened step-one standard, the state supreme court reviewed the cases independently using the correct test and did not find error in a single case.⁶⁵² As a result, in Justice Liu's estimation, it "is past time for a course correction."⁶⁵³ In Section IV.A, we discuss Justice Liu's proposed alternatives for a change in the court's "analytical approach."⁶⁵⁴

2. Disregarding the High Court's Prohibition Against Judicial Speculation at Step One

In addition to disapproving of the California Supreme Court's step-one test, the Supreme Court in *Johnson* reiterated the prohibition against judicial speculation.⁶⁵⁵ The Court explained, "The *Batson* framework is designed to produce actual answers to suspicions and inferences that discrimination may have infected the jury selection process."⁶⁵⁶ Thus, trial judges are precluded from hypothesizing, that is, coming up with "good reasons" a proponent "might have had" for a strike; they are limited to considering "the real reason."⁶⁵⁷ Simply put, when the strike opponent has raised an inference of discrimination, the trial court must obtain "a direct answer" from the strike proponent "by asking a simple question."⁶⁵⁸

Justice Liu's dissenting opinions in step-one cases also illustrate how the California Supreme Court repeatedly ignores *Johnson*'s directive against judicial speculation.⁶⁵⁹ For example, in *People v. Harris*, the jury could not reach a verdict in the defendant's first trial, with the only Black juror voting to acquit.⁶⁶⁰ At the second trial, the defense objected to the prosecution's strike of the first two of three Black prospective jurors.⁶⁶¹ Defense counsel argued that African Americans were "underrepresented in the venire, not[ing] that the holdout juror from [the defendant's] first trial was African-American" and that the prosecutor had challenged the jurors in the belief they would vote to acquit, as a Black juror in the first trial had done.⁶⁶² The trial court denied the *Batson* motion because the defense had not made a prima facie showing of purposeful discrimination.⁶⁶³ The California Supreme Court affirmed, offering its own possible reasons for the prosecutor's strikes.⁶⁶⁴

Justice Liu concurred in the result, but wrote separately to explain that the majority's *Batson* precedents conflict "with principles set forth by the United States Supreme Court."⁶⁶⁵ In *Harris*, Justice Liu described the court's "pattern of decisions" that misapply *Johnson* to defeat the United States Supreme Court's "objective" of obtaining "actual answers" from the prosecution at step one.⁶⁶⁶ He explained that "the mere fact that a court can find *possible* race-neutral reasons in the record for a prosecutor's strikes does not negate an inference of discrimination at *Batson*'s first step."⁶⁶⁷ Given the "inherent uncertainty present in inquiries of discriminatory purpose," Justice Liu pointed out that *Johnson* demands refusal to "engag[e] in needless and imperfect speculation when a direct answer can be obtained by asking a simple question" of the prosecutor.⁶⁶⁸ In *Harris*, Justice Liu called for reform from another body: "The fact that our jurisprudence appears quite entrenched only heightens the need for a course correction by higher authority."⁶⁶⁹

In *People v. Reed*, the defendant, who is Black, objected to the prosecution's use of five of its first eight peremptory challenges to remove five of the six Black prospective jurors in the jury box.⁶⁷⁰ The trial judge, applying the "strong likelihood" test, ruled that Reed had not made a prima facie showing of discrimination and denied the *Batson* objection.⁶⁷¹ The California Supreme Court independently reviewed the ruling and, applying the *Johnson* test, upheld the trial judge's decision on several grounds. They included: (1) the total number of strikes the prosecutor exercised throughout jury selection (not just at the time of the objection); (2) race-neutral reasons the majority discerned from the record that would have supported the strikes; and (3) a comparison of the struck Black jurors with some of the seated White jurors.⁶⁷²

Justice Liu dissented and found fault with the court's analysis on all counts.⁶⁷³ At bottom, his disagreement—shared by Justice Kennard—was both with the court's failure to adhere to the United States Supreme Court's directives in *Johnson* and the court's inconsistent application of its own precedent.⁶⁷⁴ Here, we highlight the former, specifically the court's practice of hypothesizing reasons for a prosecutor's strike, a practice the Supreme Court "has never approved."⁶⁷⁵ Justice Liu carefully examined the majority's hypothesized reasons, demonstrating that they did not hold up, especially when compared to the circumstances or answers of White jurors whom the prosecution retained.⁶⁷⁶ For example, the majority speculated that the prosecutor may have had reservations about struck jurors Janice C. and Mary C. because, according to their questionnaires, their spouses "had prior contact with law enforcement."⁶⁷⁷ The court cited its long-standing precedent that "a negative experience with the criminal justice system is a valid neutral reason for a peremptory challenge."⁶⁷⁸ Justice Liu pointed out that "at least three non-black jurors seated on the final jury had relatives who had been arrested."⁶⁷⁹ Concluding that the trial court should have required the prosecutor to give his reasons for removing five of six Black jurors, Justice Liu wrote, "Today's opinion does exactly what the high court says we should not do: it indulges 'the imprecision of relying on judicial speculation to resolve plausible claims of discrimination.'"⁶⁸⁰

The same day the California Supreme Court issued its opinion in *Rhoades*, the court decided *People v. (Joe Edward) Johnson*, again upholding a trial judge's ruling that the defendant had not made a prima facie showing of discrimination.⁶⁸¹ The defendant, who is Black, was sentenced to

death for the murder of a White man.⁶⁸² The prosecution, in support of the death penalty, introduced evidence that the defendant had been convicted of the rape of a White woman.⁶⁸³

Before jury selection commenced, the prosecutor announced that he had run a criminal history check on “some of the jurors.”⁶⁸⁴ He learned that one of the African-American prospective jurors, Kenneth M., had two misdemeanor convictions, though the juror indicated on his questionnaire that he had never been accused of or arrested for a crime.⁶⁸⁵ The trial judge rejected the defendant’s motion that the prosecution turn over the information about all the jurors it had investigated, agreeing that the prosecution might be required to do so if the defendant made a *prima facie* showing of a *Batson* violation.⁶⁸⁶ Over the defendant’s objection, the prosecutor used three of his first 15 peremptory challenges to remove three of the five Black jurors who, at different times, were seated in the jury box.⁶⁸⁷ The trial court found that the defendant had not satisfied step one as to any of the objections.⁶⁸⁸ When Kenneth M. was called to the box as a prospective alternate juror, the prosecutor struck him over the defendant’s objection.⁶⁸⁹ The trial court again ruled that the defendant had not made a *prima facie* showing of discrimination, and found that nothing about the prosecution’s investigation of Kenneth M. supported such a showing.⁶⁹⁰ The seated jury included three African Americans.⁶⁹¹ On appeal, the California Supreme Court held that there was no *Batson* error at step one. The court was not persuaded by the number of strikes against Black jurors, the rate at which the prosecutor removed African Americans, or the prosecutor’s background check on Kenneth M. and some of the other jurors.⁶⁹² The majority was primarily influenced by the number of Blacks on the seated jury, i.e., the fact that the prosecutor had accepted those jurors.⁶⁹³

Justices Goodwin Liu and Mariano-Florentino Cuéllar dissented. Justice Cuéllar criticized the majority for turning “a blind eye” to discrimination against Black prospective jurors.⁶⁹⁴ He wrote:

The trial court had compelling evidence that the prosecutor, even before striking any African American jurors, had singled out African American jurors for special—and unlawful—scrutiny. Yet when the prosecutor sought to excuse a majority of the African American prospective jurors from the jury that would decide whether defendant Joe Edward Johnson would be subject to the death penalty, no one asked the prosecutor to explain his reasons.⁶⁹⁵

Justice Cuéllar faulted the majority for not taking into account four factors, which demonstrated that the record was “more than sufficient” to raise an inference of discrimination: (1) “issues of race were salient in this case”; (2) “the prosecutor appeared to single out African American jurors in conducting his extrajudicial criminal history investigation”; (3) the prosecutor excluded most Black jurors who were in the box and struck them “at a far higher rate than other jurors”; and (4) neither the record nor the majority offered reasons “that would necessarily dispel any inference of bias.”⁶⁹⁶ Justice Cuéllar called the majority opinion “a road map for ensuring that unlawful discrimination evades judicial scrutiny.”⁶⁹⁷ The decision, he explained, “encourages prosecutors to . . . single out the disfavored group for intensive investigation prior

to jury selection, use the results to disqualify as many members of that cognizable group as possible in voir dire, and then stonewall any inquiry into whether the investigation was mere racial profiling.”⁶⁹⁸

Justice Liu, who joined Justice Cuéllar’s dissenting opinion, separately described *Johnson* as “yet another case in which a black man was sentenced to death for killing a white victim after a jury selection process in which the prosecution disproportionately excused black prospective jurors,” and “yet another case in which this court has refused to find any inference of discrimination in jury selection.”⁶⁹⁹ He commented: “[I]f the facts in this case do not give rise to an inference of discrimination, then I am not sure what does.”⁷⁰⁰ Justice Liu reiterated his “serious doubts” about the majority’s adherence to “*Batson*’s mandate.”⁷⁰¹ Though he addressed each of the “three dimensions of harm” *Batson* was intended to remedy—the denial of equal protection to the Black defendant who is tried by a jury from which Blacks have been excluded, deprivation of the individual Black juror’s citizenship rights, and subversion of the public’s faith in the criminal legal system—here, Justice Liu emphasized the latter.⁷⁰² Justice Liu wrote, “Today, as when *Batson* was decided, it is a troubling reality, rooted in history and social context, that our black citizens are generally more skeptical about the fairness of our criminal justice system than other citizens.”⁷⁰³ Justice Liu’s observation coheres with our findings regarding the “reality” of many African Americans’ experiences and perceptions, how both are exploited by prosecutors to disproportionately strike Black jurors, and how California courts, applying the three-step procedure, largely facilitate discrimination.

3. Denying Meaningful Appellate Review of the Prosecution’s Reasons for Its Strikes

The great weight of authority requires that an appellate court reach the ultimate question—did the trial court commit *Batson* error?—if the striking party gave reasons for the strike and the trial judge ruled on the *Batson* objection.⁷⁰⁴ For decades, the California Supreme Court vacillated on this issue. In some opinions, the court followed the majority of federal and state courts, and in others, the court revisited the first step of the procedure to conclude that the defendant had not made a prima facie showing of discrimination.⁷⁰⁵ In the latter circumstance, dissenting justices insisted that the majority was ignoring “federal constitutional law.”⁷⁰⁶

Several years ago, in *People v. Scott*, a majority of the court, acknowledging that its decisions have “not always been entirely consistent,” resolved that it would, once and for all, go its own way.⁷⁰⁷ To clarify its past practices, the court held that when a trial judge finds no prima facie showing at step one, but “allows or invites” the prosecution to offer its explanation, and then denies the motion, a reviewing court “should begin its analysis . . . with a review of the first-stage ruling.”⁷⁰⁸ Justice Liu, joined by Justice Leondra Kruger, objected that, in so doing, the court had overruled its own recent precedent, which held that once the prosecutor states a reason and the court rules on the reason, “the first stage of the *Batson* inquiry . . . is moot.”⁷⁰⁹ As had some of his predecessors on the court, Justice Liu pointed out that the decision also put California “at odds with the majority of state high courts and federal circuit courts that have considered the issue.”⁷¹⁰

In *Scott*, Justice Liu also wrote that the majority's departure "scrambles . . . clear and well established [*Batson*] procedure."⁷¹¹ As a result, "the court opts to resolve *Batson*'s inquiry into discriminatory purpose based on 'needless and imperfect speculation' as to why the prosecutor might have struck [the juror] even though 'actual answers' to that question were stated by the prosecutor and evaluated by the trial court."⁷¹² Justice Liu predicted, "Under today's decision, when a prosecutor has stated a facially neutral reason that nonetheless reveals discrimination . . . , the *Batson* violation will evade appellate review so long as the trial court did not err in its first-stage ruling."⁷¹³

4. Reflexive Deference: Allowing Trial Courts to Avoid Their Gatekeeping Responsibility

As a general rule, appellate courts afford "great deference" to trial court findings of fact, such as a finding of purposeful discrimination at step three of the *Batson* procedure.⁷¹⁴ This is because the ruling is largely determined by credibility assessments.⁷¹⁵ For about a decade after *Wheeler*, the California Supreme Court required that the trial judge make a "sincere and reasoned" attempt to evaluate a prosecutor's explanation for each peremptory challenge to which the defense objected before the court would defer to the judge's denial of a *Batson* objection.⁷¹⁶ Applying this standard, the court reversed for step-three *Batson* error in several cases.⁷¹⁷ The court's resolve, however, waned in the late 1980s, as it began to defer to trial judges' unexplained decisions while continuing to pay lip service to the rule.⁷¹⁸ In the 1990s, the California Supreme Court moved towards abandoning the rule.⁷¹⁹

In 2001, in *People v. Silva*, the court offered the following nonbinding comment, known as "dictum": "When the prosecutor's stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings."⁷²⁰ Justice Liu later observed that this language had "come to comprise the rule that crucially qualifies the trial court's obligation to make a sincere and reasoned attempt to evaluate the prosecutor's explanations at *Batson*'s third stage."⁷²¹ He pointed out that, two years later, in *People v. Reynoso*, reversing the appellate court's finding of *Batson* error, the court "turned *Silva*'s dicta into doctrine."⁷²²

Reynoso was a 4-3 decision from which Justices Joyce Kennard, Kathryn Werdegar, and Carlos Moreno dissented.⁷²³ Both Justice Kennard's opinion and that of Justice Moreno concluded that the majority had done grave damage to the right of Latinx citizens—the subject of the prosecution's strikes—to serve on California juries.⁷²⁴ Justice Moreno wrote that the decision constituted "a significant retreat" from the court's "*Wheeler* jurisprudence and strikes a major blow against a defendant's constitutional right to a fair, impartial, and representative jury."⁷²⁵ Observing that the majority's "standard of appellate review . . . effectively insulates discriminatory strikes from meaningful scrutiny at both the trial and appellate stages," Justice Kennard predicted what has come to pass at the court.⁷²⁶ A decade later, Justice Liu explained that the "practical effect" of deferring to a trial court's unexplained denial of a *Batson* objection "is to hold that what a trial court leaves unsaid in denying a *Batson* claim will be construed on appeal *in favor of the prosecution*."⁷²⁷ In his estimation, the impact of the majority's rule is all the more intolerable "in light of what decades of research have revealed about the stubborn role of race in jury selection."⁷²⁸

It would be a mistake to suggest that Justice Liu’s criticism of the majority’s “reflexive deference” to unexplained trial court *Batson* rulings is based simply on a preference for the court’s rule prior to *Reynoso*. Rather, he objects to the California Supreme Court’s “fail[ure] to evaluate [the] defendant’s claim in the manner that high court precedent requires.”⁷²⁹ The following two relatively recent opinions illustrate how the court’s current practice of automatic deference continues to strike a “major blow” to the rights of prospective jurors of color and those of criminal defendants.⁷³⁰

In *People v. Williams*, a capital case, defense counsel made three *Batson* motions in response to the prosecutor’s use of peremptory challenges against five Black women.⁷³¹ The court asked the prosecutor to provide explanations for the first objection, involving the first three strikes, to which the prosecutor replied that each of the three Black women seemed reluctant to impose the death penalty.⁷³² The trial judge denied the motion without explanation.⁷³³ The defense objected separately to the prosecution’s strikes of the fourth and fifth African-American women.⁷³⁴ The prosecutor gave the same reason—his belief that each would be reluctant to impose the death penalty—for excusing both women, emphasizing that he based his opinion more on the jurors’ demeanor and the delivery of their responses than what they actually said.⁷³⁵ The trial judge declared that she did not have any recollection of the fourth African-American woman the prosecutor struck and had not taken any notes, but “would accept the prosecutor’s explanation.”⁷³⁶ As to the fifth, the trial court declared that it did not recall the juror, again had not taken any notes, “could only go by what the prosecutor was saying, and it accepted the prosecution’s explanation.”⁷³⁷ Defense counsel then requested that the trial court review the statistical racial makeup of the jury.⁷³⁸ The trial judge responded: “I have to say in my other death penalty cases I have found that the black women are very reluctant to impose the death penalty; they find it difficult no matter what it is.”⁷³⁹ The California Supreme Court deferred to the trial court’s ruling, and held that there was no *Batson* violation.⁷⁴⁰

Dissenting in *Williams*, Justice Liu found that there was no basis—such as a “sincere and reasoned effort” by the trial judge to analyze all of the relevant circumstances—for the California Supreme Court to defer to the judge’s decision.⁷⁴¹ He wrote that deference where a trial judge merely announces a ruling without evaluating the prosecutor’s reasons “all but drains the constitutional protection against discrimination in jury selection of any meaningful application.”⁷⁴² Justice Liu concluded, “The upshot of this erroneous application of deference is the denial of defendant’s *Batson* claim despite the fact that *no court*, trial or appellate, has ever conducted a proper *Batson* analysis.”⁷⁴³

Justice Werdegarr joined Justice Liu’s dissent and wrote separately.⁷⁴⁴ She found it unnecessary to engage in line-drawing about appellate deference because of “[t]he egregious circumstances of the present case” in which the trial judge had no notes or recollection of the fourth and fifth Black jurors, relied solely on what the prosecutor said, and supported her ruling with her observation about “Black women[’s]” views on capital punishment.⁷⁴⁵

In *People v. Hardy*, the defendant, who is African American, was convicted and sentenced to death for the rape-murder of a White woman.⁷⁴⁶ The prosecutor exercised her peremptory challenges to remove the only African American, Frank G., who was in the jury box during the selection of the 12 jurors who would decide the case.⁷⁴⁷ She struck the first two Black prospective jurors from the alternate panel, though one African American remained after the parties had exhausted their challenges.⁷⁴⁸ In response to the defendant's *Batson* motion, the trial judge found that he had not made a prima facie showing of discrimination.⁷⁴⁹ However, the prosecutor volunteered her reasons—offering six for striking Frank G.—and the trial judge ultimately denied the motion because the prosecutor had “explained race neutral reasons for excusing the jurors.”⁷⁵⁰ On appeal, the California Supreme Court, which the year before had rejected a trial court's “global finding” in *Gutierrez*, announced it was satisfied that deference to the trial court was appropriate here because “the prosecutor's stated reasons are both inherently plausible and supported by the record.”⁷⁵¹ To the extent there was ambiguity and indeed an outright mistake about a juror's answer in one of the prosecutor's reasons, the court blamed defense counsel for neglecting to call the judge's attention to the prosecutor's error.⁷⁵²

Justice Liu dissented on several grounds, among them, the majority's willingness to defer to the trial court's ruling.⁷⁵³ The majority, he explained, acknowledged that “at least two of the [prosecutor's] reasons are ‘weak,’ the demeanor-based reason finds no support in the record,” and, upon examination, the prosecutor's reasons are also not self-evident.⁷⁵⁴ Justice Liu further criticized the majority for assigning blame to defense counsel, writing that “this reasoning is at odds with what we said in *Gutierrez*.”⁷⁵⁵ In *Williams, Hardy*, and other cases, Justice Liu has urged that where a trial court bypasses its duty to explain its decision, United States Supreme Court precedent does not sanction deference.⁷⁵⁶ In cases such as these, deference all but “dispense[s] with appellate review . . . since it is so easy to rationalize a silent record with a cacophony of presumptions.”⁷⁵⁷

5. Constraining Comparative Juror Analysis at Step 3: Undermining *Batson*'s Most Effective Tool

Reflexive application of deference where there is nothing in the record to defer to, judicial speculation as to the reasons for a strike where the prosecutor has offered none, and unduly limited and grudging application of comparative juror analysis *combine to erect a virtually impossible hurdle* for *Batson* claims to surmount.⁷⁵⁸

As discussed in Sections I.C.5, comparative juror analysis—the side-by-side comparison of struck and seated jurors—is an effective method of assessing whether discrimination has occurred. The California Supreme Court approved this approach in *Wheeler*, and employed it often in subsequent opinions such as *People v. Trevino*.⁷⁵⁹ In 1989, in *People v. (James Willis) Johnson*, a majority of the court retrenched.⁷⁶⁰ The court held that *Trevino* had “placed undue emphasis” on these comparisons.⁷⁶¹ Observing that the “majority pay[s] lip service to the *Batson* rule, but in fact violate[s] both its letter and its spirit,” Justice Stanley Mosk dissented because the court found no error in a case in which “the prosecutor deliberately struck all the

Blacks, all the Asians, and all the Jews from the jury that condemned [the defendant] to death.”⁷⁶² He enumerated the ways in which the majority had disregarded other *Wheeler* precedents.⁷⁶³ Justice Mosk was especially baffled by the majority’s “attack” on the comparative juror analysis described in *Trevino*.⁷⁶⁴ Calling it “a highly useful analytical tool,” Justice Mosk observed, “Virtually every one of our decisions both before and after *Trevino* relied on this same analytical technique.”⁷⁶⁵

The United States Supreme Court endorsed comparative juror analysis in 2003 and 2005 in *Miller-El v. Cockrell* (*Miller-El I*) and *Miller-El v. Dretke* (*Miller-El II*).⁷⁶⁶ As we described above, this powerful analytic approach was central to the court’s grant of relief in *Miller-El II* and three subsequent *Batson* cases: *Snyder v. Louisiana*, *Foster v. Chatman*, and *Flowers v. Mississippi*.⁷⁶⁷

Three years after *Miller-El II*, the California Supreme Court, in *People v. Lenix*, reluctantly conceded that its “practice of declining to engage in comparative juror analysis [at step three] for the first time on appeal” could not be reconciled with *Miller-El II* and *Snyder* because the practice “unduly restricts review based on the entire record.”⁷⁶⁸ The court, however, wasted no words in expressing its reservations about this approach, and signaled its intention to conduct the analysis sparingly.⁷⁶⁹ The California Supreme Court listed several reasons for its view that the approach has limited utility on appeal, e.g., comparative juror analysis is “performed on a cold record” and may miss the “nuances” of live communication; jury selection is “a fluid process” that changes until the jury is sworn; and “[v]oir dire is a process of risk assessment” about how a juror will act individually and how the group will act collectively.⁷⁷⁰ In opinion after opinion, the court has relied on these and other like objections to constrain the efficacy of comparative juror analysis as a tool for ferreting out discriminatory peremptory challenges.⁷⁷¹

The approach, as conceptualized by the United States Supreme Court, is not complicated: it involves “side-by-side comparisons” of “similarly situated” struck Black and non-Black jurors.⁷⁷² To be similarly situated, jurors need not be “identical in all respects.”⁷⁷³ The Court agreed that such a requirement “would leave *Batson* inoperable; potential jurors are not products of a set of cookie cutters.”⁷⁷⁴ If the prosecutor’s reason for the strike “applies just as well” to a struck and “otherwise-similar” seated juror, “that is evidence tending to prove purposeful discrimination to be considered at *Batson*’s third step.”⁷⁷⁵

The United States Supreme Court has conducted a comparative analysis of the prosecution’s treatment of struck and seated jurors in a variety of circumstances, including: (1) asking most Black jurors different questions about executions than White jurors;⁷⁷⁶ (2) eliciting assurances from White jurors who had scheduling conflicts that they could serve, but asking for no such assurances from Black jurors;⁷⁷⁷ (3) striking an African-American juror because of his wife’s employment at a hospital while retaining a White juror who worked in the same hospital;⁷⁷⁸ (4) asking a large number of questions of the struck Black jurors and relatively few of the seated White jurors;⁷⁷⁹ and (5) investigating the background of struck Black jurors while conducting no investigation of seated White jurors.⁷⁸⁰

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Amicus Brief: People v. Donte McDaniel

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

DON'TE LAMONT McDANIEL,

Defendant and Appellant.

CAPITAL CASE

No. S171393

**PROPOSED BRIEF OF *AMICUS CURIAE*
THE HONORABLE GAVIN NEWSOM IN SUPPORT OF
DEFENDANT AND APPELLANT MCDANIEL**

Appeal from Judgment of
The Superior Court of Los Angeles County, Case No. TA074274
The Honorable Robert J. Perry, Presiding

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INTRODUCTION

Amicus, California Governor Gavin Newson, submits this brief to focus the Court’s attention on the historical and present-day relationship between racism and California’s capital punishment system as it pertains to the “inviolable” right to trial by jury. Cal. Const. art. I, § 3. Amicus also submits this brief to support Mr. McDaniel’s position that unanimity and proof beyond a reasonable doubt are fundamentally intertwined elements of the state’s jury right incorporated by section 1042 of the Penal Code and article I, section 16 of the California Constitution. Appellant’s Third Supplemental Reply Brief, *People v. McDaniel*, (Cal. Sept. 11, 2020) (No. S171393); *see also* Appellant’s Opening Brief at 196-224, *People v. McDaniel* (Cal. Aug. 6, 2015) (No. S171393).

In Section I, amicus presents extensive evidence that racial discrimination infects the administration of California’s death penalty. Today’s inequities in the imposition of death sentences are the result of the nation’s and the state’s history of racial terror and subjugation. African Americans’ experiences—generation after generation—subject to disparate enforcement of the law have generally shaped their views of the criminal justice and capital punishment systems. There are three relevant mechanisms by which African-American Californians have been disproportionately excluded from California capital juries: underrepresentation in jury venires, death qualification, and peremptory challenges. These three mechanisms all but ensure that sentencing decisions are made by juries that are

disproportionately White and death-prone, heightening the risk that, absent additional protections, these decisions will be based on racial bias.

In Section II, amicus explains why requiring unanimity and proof beyond a reasonable doubt in the jury's penalty decision-making will reduce racial discrimination and arbitrariness in capital sentencing. Nationally and in California, non-unanimous verdicts have been intended to entrench White jurors' control of deliberations. In fact, there are stunning parallels between the assaults on California's jury right in the mid-1990s and the non-unanimous jury verdict schemes recently repudiated by the United States Supreme Court. Amicus also focuses this Court's attention on the compelling social science research that has examined jury diversity, the unanimity requirement, and the beyond a reasonable doubt standard. Empirical evidence demonstrates that all three improve the quality and reliability of jury deliberations and reduce the impermissible influence of racial bias in penalty verdicts.

California's capital punishment scheme is now, and always has been, infected by racism. Governor Newson submits this brief because the life-and-death decisions in capital cases need the protections that would be provided by the requirements of unanimity and proof beyond a reasonable doubt in the jury's verdict.

ARGUMENT

I. THE CALIFORNIA JURY RIGHT SHOULD BE UNDERSTOOD IN THE CONTEXT OF THE HISTORICAL RELATIONSHIP BETWEEN RACISM AND CAPITAL PUNISHMENT.

A. California Continues to Impose the Death Penalty Despite Compelling Evidence of Racial Discrimination in its Administration.

The overwhelming majority of studies that have analyzed America's death penalty have found that racial disparities are pervasive, and that the race of the defendant and the race of the victim impact whether the death penalty will be imposed.¹ In the last two decades, a multi-state series of studies on the role of race in capital punishment revealed that African-American defendants who killed African-American victims were less likely to be sentenced to death than African-American defendants who killed non-African-American victims. *See* Am. Bar Assoc. Death Penalty Due Process Rev. Project, *The State of the Modern Death Penalty in America: Key Findings of State Death Penalty Assessments (2006-2013)*, at 8 (2013). These findings have been

¹ *See, e.g.*, U.S. Gen. Acct. Off., GAO/GGD 90-57, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* 1-2, 5 (1990) (conducting an “evaluation synthesis” of the published research on race and the death penalty, and finding, consistently, that the race of the victim influenced the likelihood of capital charging and sentencing).

exhaustively replicated in both the state² and federal systems.³ Race also impacts whether a capital defendant is ultimately executed.⁴ This evidence of its discriminatory application has in part led to the death penalty “fall[ing] out of favor in most of the country.” Fair Punishment Project, *Too Broken to Fix: Part I: An In-depth Look at America’s Outlier Death Penalty Counties* 3 (2016).⁵

California is not immune from the invidious influence of racial bias in its application of the death penalty. As of July 1, 2020, Black Californians make up over a third of the state’s death row, NAACP Legal Def. & Educ. Fund, Inc., *Death Row USA* 36 (2020) [hereinafter NAACP, *Death Row USA*], but only 6.5% of

² See, e.g., Death Penalty Info. Ctr., *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty* 30-34 (2020) (summarizing the consistent findings of studies in “multiple jurisdictions over a broad range of years . . . [and] account[ing] for hundreds of confounding variables” that conclude that the race of the victim affects whether a defendant is charged with a capital crime or sentenced to death).

³ See, e.g., U.S. Dep’t of Just., *The Federal Death Penalty System: A Statistical Survey (1988-2000)*, at 6 (2000) (finding that United States Attorneys were almost twice as likely to recommend seeking the death penalty for a Black defendant when the victim was not Black as when the victim was Black).

⁴ Frank R. Baumgartner et al., *These Lives Matter, Those Ones Don’t: Comparing Execution Rates by the Race and Gender of the Victim in the U.S. and in the Top Death Penalty States*, 79 Alb. L. Rev. 797 (2015) (finding that execution is most likely when a Black defendant kills a White victim).

⁵ Recently, the Washington Supreme Court declared the state’s death penalty invalid under the state Constitution “because it is imposed in an arbitrary and racially biased manner” as demonstrated by empirical analysis. *State v. Gregory*, 427 P.3d 621, 627 (Wash. 2018).

the state's population. *Quick Facts California*, U.S. Census Bureau (2019), <https://www.census.gov/quickfacts/CA>. Black capital defendants are also overrepresented when compared to the percentage of Black people arrested for homicide in California, which averaged approximately 26% from 2005 to 2019.⁶ The state's recent trends for Latinx defendants also indicate their overrepresentation when compared to the state population and homicide arrests; all eight people sentenced to death from 2018-2019 were Latinx,⁷ whereas they comprise 39.4% of the state population, *Quick Facts California, supra*, and represent on average fewer than half of homicide arrests from 2005 to 2019.⁸

California is home to nearly a third of the nation's so-called "outlier" counties that continue to impose death sentences at extremely high rates while "the vast majority" of the country has abandoned capital punishment.⁹ Fair Punishment Project, *Too*

⁶ See Cal. Dep't of Just., *Homicide in California* 36 (2014) (showing homicide arrests by race from 2005 to 2014); Cal. Dep't of Just., *Homicide in California* 38 (2019) (showing the same data from 2010 to 2019).

⁷ See Cal. Dep't of Just., *Homicide in California* 2 (2019); Cal. Dep't of Just., *Homicide in California* 2 (2018).

⁸ See Cal. Dep't of Just., *Homicide in California* 36 (2014) (showing homicide arrests by race from 2005 to 2014); Cal. Dep't of Just., *Homicide in California* 38 (2019) (showing the same data from 2010 to 2019).

⁹ These are Kern, Los Angeles, Orange, Riverside, and San Bernardino Counties, and they are designated as "outliers" for being among just 16 of the 3,143 counties or county equivalents in the United States that imposed five or more death sentences between 2010 and 2015.

Broken to Fix: Part II: An In-depth Look at America's Outlier Death Penalty Counties 2-3 (2016).

California also ranks in the nation's top five jurisdictions sentencing defendants under twenty-one years old to death. John H. Blume et al., *Death by Numbers: Why Evolving Standards Compel Extending Roper's Categorical Ban Against Executing Juveniles from Eighteen to Twenty-One*, 98 Tex. L. Rev. 921, 938-42 (2020). Racial disparities in sentencing for these defendants are exacerbated by stereotypical perceptions of youth of color as "dangerous predators," meaning that "white but not black or Latinx criminal defendants benefit from the mitigating effects of youth." *Id.* at 944-47. The numbers bear this out as nationally more than seven in 10 of all people sentenced to death under age twenty-one are Black or Latinx, whereas among adult defendants, slightly over half are Black or Latinx. *Id.* at 947. In Los Angeles County¹⁰ where Mr. McDaniel was tried, these effects appear to extend beyond the twenty-one year cut off. See Attachment A, at 79-80. Of California's current death row population sentenced in Los Angeles County for offenses committed when they were under the age of twenty-five, 89% are people of color, *id.*, whereas California's death row is overall only 67% people of color, NAACP, *Death Row USA*, *supra*, at 36. Mr. McDaniel is among this group of people of color sentenced to death in Los Angeles County for offenses committed

¹⁰ Los Angeles and Riverside Counties are responsible for 15% of all national death sentences for defendants under twenty-one since 2005, but make up only around 4% of the country's population. Blume et al., *supra*, at 942.

when they were under the age of twenty-five. Attachment A, at 79.

California's outlier counties demonstrate the strongest patterns of racial bias. Fair Punishment Project, *Part II, supra*, at 3. In San Bernardino County, only 9.5% of the population is Black, while 40% (two of five) of the individuals sentenced to death between 2010 and 2015 were Black. *Id.* at 19. Of the nine defendants sentenced to death in Orange County from 2010 to 2015, eight were people of color and four were Black, even though only 2% of the county's population is African American. *Id.* at 43.

Social science research confirms these racial disparities and others. Even after controlling for aggravating circumstances and geographical variations, empirical evidence shows that the race of the defendant and the race of the victim affect California's death sentencing. Glenn L. Pierce & Michael L. Radelet, *Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999*, 46 Santa Clara L. Rev. 1, 37-38 (2005). This state-wide study found the likelihood of receiving a death sentence in Black victim cases was on average 59.3% lower than in White victim cases. *Id.* The likelihood was 67% lower for Latinx victim cases than in White victim cases. *Id.* at 38. Other studies at the county level have reproduced these racial disparities, showing that the race of the victim is determinative of death sentencing rates in California.¹¹

¹¹ Catherine Lee, *Hispanics and the Death Penalty: Discriminatory Charging Practices in San Joaquin County, California*, 35 J. Crim. Just. 17, 19, 22 (2007) (finding that

Los Angeles County, where Mr. McDaniel was tried, is a national outlier in its continued imposition of capital punishment. Death Penalty Info. Ctr., *The Death Penalty in 2019: Year End Report* 10 (2019).¹² Los Angeles is also an outlier within California in the disproportionate percentage of Black defendants it has sentenced to death. Attachment A, at 79. Since the resumption of the death penalty in California in 1977, “44% of people Los Angeles County has sent to death row are Black, and 17% are white.” *Id.* Over the same period, all other California counties have imposed death judgments that “reflect a very different demographic breakdown . . . 27% Black and 42% white.” *Id.* Los Angeles continues to be responsible for an outsized proportion of the people of color on California’s death

defendants were far less likely to face a death-eligible charge if they were accused of killing either a Latinx or Black victim rather than a White victim); Steven F. Shatz & Terry Dalton, *Challenging the Death Penalty with Statistics: Furman, McCleskey, and a Single County Case Study*, 34 Cardozo L. Rev. 1227, 1260-63, 1268 (2013) (finding the likelihood of a death sentence was significantly greater in homicides taking place in the predominantly White half of Alameda County, even though this area had a lower homicide rate); see Steven F. Shatz et al., *Race, Ethnicity, and the Death Penalty in San Diego County: The Predictable Consequences of Excessive Discretion*, 51 Colum. Hum. Rts. L. Rev. 1072, 1088-1095 (2020) (finding that the likelihood of receiving a death sentence in San Diego County was almost five times more in cases with White victims and a Black or Latinx defendant than in all other cases).

¹² “Of the 3,143 county or county equivalents in the United States, only 16—or one half of one percent—imposed five or more death sentences between 2010 and 2015.” Fair Punishment Project, *Part I, supra*, at 2. Los Angeles County is one of those 16. *Id.*

row. *Id.* Currently 85% of Los Angeles County’s death row are people of color and just 15% are White, while the rest of California’s death row is 59% people of color and 41% White. *Id.* Empirical studies suggest that historically, Los Angeles County’s death penalty charging decisions have reflected race of victim racial bias.¹³

Changes to California’s death penalty scheme have only heightened the risk that these racial disparities will persist. The most recent revision to an already expansive array of special circumstances made gang-related murders death eligible, effectively “delegat[ing] discretion for death penalty eligibility to the police definitions of gang-related crime” and notoriously inaccurate gang rosters. Catherine M. Grosso et al., *Death by Stereotype: Race, Ethnicity, and California’s Failure to Implement Furman’s Narrowing Requirement*, 66 UCLA L. Rev. 1394, 1406-07 (2019).¹⁴ Racial bias in the gang membership designation is

¹³ Nick Petersen, *Cumulative Racial and Ethnic Inequalities in Potentially Capital Cases: A Multistate Analysis of Pretrial Disparities*, 45 Crim. Just. Rev. 225, 230, 239 (2017) (evaluating Los Angeles County charging decisions from 1990 to 1994 and concluding that “cases with White victims and minority defendants are more likely to result in a death-eligible charge or death notice” after controlling for other variables).

¹⁴ The study examined California’s special circumstances and found “racial and ethnic disparities associated with [six]” special circumstances, including two of the more recently added special circumstances, gang membership and drive-by shootings. Grosso et al., *supra*, at 1406-07, 1426-27, 1429, 1432, 1435, 1439. See Cal. Penal Code § 190.2(a).

well-documented,¹⁵ and within the capital sentencing context, gang special circumstances invite jurors to enhance punishment based on a racialized mythology of gangs.¹⁶ Craig Haney, *Criminality in Context: The Psychological Foundations of Criminal Justice Reform* 194-96 (2020). This cultural conditioning has significant consequences:

Because gang members are presumed to be broadly involved in and deeply committed to criminal activity and, especially, violent crime, the mere suggestion that a criminal act is ‘gang-related’ or that a criminal defendant is ‘gang-affiliated’ carries a strong implication of guilt and enhanced culpability; the characterization simultaneously undermines the presumption of innocence and exaggerates the impulse to punish.

¹⁵ Cal. State Auditor, *The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information that May Violate Individuals’ Privacy Rights* 12 (2016). See also, Judith Greene & Kevin Pranis, Just. Pol’y Inst., *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies* 6 (2007) (“The Los Angeles district attorney’s office found that close to half of black males between the ages of 21 and 24 had been entered in the county’s gang database even though no one could credibly argue that all of these young men were current gang members.”).

¹⁶ See, e.g., Michael Welch et al., *Moral Panic over Youth Violence: Wilding and the Manufacture of Menace in the Media*, 34 Youth & Soc’y 3, 4, 16 (2002) (describing the term gang as “heavily loaded, conjuring potent images of predatory urban street gangs” and its sensationalized connection with minority youths).

*Id.*¹⁷ Mr. McDaniel faced gang enhancements, and he asserts that the prosecution “specifically directed the penalty phase jury to focus upon [them].”¹⁸

The potential for the gang-designation to close off a juror to mitigating evidence should be especially concerning when viewed against evidence that gang member special circumstances “apply overwhelmingly more frequently in black and Latinx defendant cases.” Grosso et al., *supra*, at 1441. California’s expansion of capital crimes thus reflects a choice that heightens the risk of racial bias, *id.*, in stark contrast to rest of the country, which has largely abandoned the death penalty in recognition of the pervasive influence of race. Fair Punishment Project, *Part I*, *supra*, at 3.

B. Capital Punishment in the United States Is Rooted in the Legacy of Slavery, Racial Terror, and Subjugation.

Since its inception, the American death penalty has been disproportionately applied, first, to enslaved Africans and African Americans, and, later, to free Black people. Many capital statutes in the American colonies were applicable only to Black defendants, and capitalized even minor property crimes. Stuart

¹⁷ See also, Mitchell L. Eisen et al., *Examining the Prejudicial Effects of Gang Evidence on Jurors*, 13 J. Forensic Psych. Prac. 1, 6-8 (2013) (finding that jurors were almost 20% more likely to return guilty verdicts when told that a defendant was a gang member than jurors presented with identical evidence in which no mention of gangs was made).

¹⁸ See Appellant’s Opening Brief at 128; *id.* at 2-3, 114-30 (describing the gang enhancements and the prosecution’s “highly inflammatory” gang testimony).

Banner, *The Death Penalty: An American History* 8-9 (2002). Northern states later moved towards abolition, but in contrast, the southern states “saw no solution other than capital punishment” to maintain the regime of racial domination over two million enslaved people. *Id.* at 131, 142; see, e.g., *McCleskey v. Kemp*, 481 U.S. 279, 328–30 (1987) (Brennan, J., dissenting) (describing Georgia’s “dual system of crime and punishment” for Black and White defendants).

The Southern dismantling of Reconstruction meant that any improvements in conditions for Black Americans after the Civil War were instead replaced by a “caste system based on race.” Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America’s Great Migration* 37–38 (2010). In particular, the southern “[s]tates began to look to the criminal justice system” to “maintain the subordination of African-Americans,” and “routinely charged” Black people with “a wide range of ‘offenses,’ some of which whites were never charged with.” Bryan Stevenson, *A Presumption of Guilt*, N.Y. Rev. Books (July 13, 2017).¹⁹ The “tension” between the South’s determination to maintain the regime of white supremacy and the ambition of African Americans to “rise up from slavery . . . [l]ed to an era of lynching and violence that traumatized black people for decades.” *Id.*²⁰ While the true number may never be known, a recent study documented 4,084 racial terror lynchings in twelve Southern

¹⁹ <https://www.nybooks.com/articles/2017/07/13/presumption-of-guilt/>.

²⁰ Across the South, “someone was hanged or burned alive every four days from 1889 to 1929.” Wilkerson, *supra*, at 39.

states between 1877 and 1950. Equal Just. Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* 4 (3d ed. 2017) [hereinafter EJI, *Lynching in America*].²¹

The eventual decline of lynching “relied heavily on the increased use of capital punishment imposed by court order following an often-accelerated trial.” EJI, *Lynching in America, supra*, at 5. Non-unanimous verdicts were one of the tools used to increase courtroom “efficiency” and provide a swift alternative “for less tasteful forms of racial violence.” See Thomas Ward Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1612-14 (2018) (citations omitted) (referencing a Mississippi newspaper that advertised non-unanimity as a “Remedy for Lynching”). The through-line from lynchings to today’s capital punishment regime led the Equal Justice Initiative to conclude that “the death penalty’s roots are sunk deep in the legacy of lynching.” EJI, *Lynching in America, supra*, at 5.

Despite California’s official entry into the Union in 1850 as a “free” state, California passed its own Fugitive Slave Act in 1852.²² The statute allowed the forced re-enslavement and

²¹ A conservative estimate is that African Americans comprised 70% of the nearly 5,000 individuals lynched across the nation between 1882 and 1968. Ken Gonzales-Day, *Lynching in the West, 1850-1935* 46 (2006). Gonzales-Day also acknowledged that the actual number of lynchings may never be known, noting, for example, Dorothy Sterling’s claim that between 1868 and 1871 alone, the Ku Klux Klan killed nearly twenty-thousand African Americans. *Id.* at 248 n.95.

²² Delilah Beasley, *Slavery in California*, 3 J. Negro Hist. 33, 38-44 (1918); see also, ACLU of N. Cal., *Gold Rush and Shattered Dreams*, Gold Chains: The Hidden History of Slavery in

deportation of any Black person who had entered the state as a slave before 1850.²³ The Act was upheld under the California Constitution, despite the state's formal ban on slavery. *See In re Perkins*, 2 Cal. 424, 438 (1852). California's first elected governor championed legislation to exclude all African Americans from the state.²⁴

Though often associated with the Deep South, extrajudicial executions and organized hate groups have a long history in California. Knute Berger, *Our Dishonorable Past: KKK's Western Roots Date to 1868*, Crosscut (Mar. 19, 2017).²⁵ For decades, especially during the 1840s-1920s, White vigilantes routinely hunted and lynched people of color throughout California. William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. Soc. Hist. 411, 416, 421-22 (2003). Between 1850 and 1935, there were 352 documented lynchings in California. Gonzales-Day, *supra*, at 46. The majority of the victims were people of color. *Id.* at 206. The myth that frontier conditions excused the state's vigilante justice is contradicted by historical evidence that

California (2019) [hereinafter Gold Chains], <https://www.aclunc.org/sites/goldchains/explore/gold-rush.html>.

²³ ACLU of N. Cal., *Gold Rush and Shattered Dreams*, Gold Chains, *supra*.

²⁴ ACLU of N. Cal., *White Supremacist in Chief*, Gold Chains, *supra*, <https://www.aclunc.org/sites/goldchains/explore/peter-burnett.html>.

²⁵ <https://crosscut.com/2017/03/history-you-might-not-want-to-know-the-kkks-deep-local-roots-west-california-washington-oregon> (“[T]he first signs of the Ku Klux Klan in California and Oregon go back nearly to the birth of the Klan itself...”).

lynch mobs persisted “‘long after the arrival’ of the law courts.” Carrigan & Webb, *supra*, at 416 (citation omitted). California’s early legal system, far from acting as a check on extra-legal executions, instead “served as an instrument” of oppression by creating a permissive environment in which “almost no white man was ever made to stand trial for the lynching of a Mexican.” *Id.* at 417.

The state saw a resurgence of KKK activity in the 1920s and 1930s. Berger, *supra*. Klan activity extended throughout the state, as “San Francisco, Oakland, Fresno, Sacramento, Kern County, the Imperial Valley and several other locations were each represented by one or more local klaverns.” Richard Melching, *The Activities of the Ku Klux Klan in Anaheim, California 1923–1925*, 56 S. Cal. Q. 175, 175 (1974). The Klan exerted significant power over state politics, helping to elect Governor Friend Richardson in 1922. Chris Rhomberg, *White Nativism and Urban Politics: The 1920s Ku Klux Klan in Oakland, California*, 17 J. Am. Ethnic Hist. 39, 44 (1998).

The state’s legacy of racial terror is especially deep in Los Angeles. Of the 352 documented lynchings in California between 1850 and 1935, there were approximately thirty-six in Los Angeles County. Gonzales-Day, *supra*, at 80. Until 1870, downtown Los Angeles hosted a “flourishing” slave market where Native people were sold through a system of convict leasing that was slavery in all but name.²⁶ During the KKK’s 1920s

²⁶ ACLU of N. Cal., *Slavery by Another Name*, Gold Chains, *supra*, aclunc.org/sites/goldchains/explore/native-american-slave-

resurgence, “the true strength of the Klan in California lay in Los Angeles” where it exerted “significant power in local politics.” Melching, *supra*, at 175. Well into the 20th century, the city resisted desegregation efforts, with a wave of lawsuits seeking to enforce racial covenants to evict African-American homeowners. Richard Rothstein, *The Color of Law: The Forgotten History of How Our Government Segregated America* 81 (2017). Others resorted to racial terror to enforce segregation; in 1945, “an entire [African- American] family—father, mother, and two children—was killed when its new home in an all-white neighborhood was blown up.” *Id.* at 147.

As with the nation, these legacies of racial violence continue to infect California’s administration of the death penalty. Moreover, there is a correlation between the influence of a politics of racial hatred and the development of legal standards undermining the rights of capital defendants. The state’s period of terror lynchings, often involving the “active collusion” of law officers, Carrigan & Webb, *supra*, at 414-17, also saw the decision in *People v. Welch*, 49 Cal. 174 (1874), reading out the unanimity protection for the penalty determination in capital trials, see Application to File Brief of Amici Curie, Hadar Aviram and Gerald Uelmen, California Constitutional Law Scholars, in Support of Defendant-Appellant McDaniel at 35-44, *People v. McDaniel* (No. S171393) (describing *Welch* and its subsequent repudiation). The rise of the KKK’s influence in the 1920s and

[market.html](#); Michael F. Magliari, *Free State Slavery: Bound Indian Labor and Slave Trafficking in California’s Sacramento Valley, 1850-1864*, 81 Pac. Hist. Rev. 155, 157 (2012).

1930s was the historical backdrop against which the protection of reasonable doubt was first read out of the California jury sentencing scheme. *See id.* at 45-48 (describing the development of *People v. Ross*, 134 Cal. 256 (1901), and its progeny in the 1920s and 1930s).

C. The Historical and Present-Day Experiences of African Americans with the Criminal Justice System Are Relevant to Understanding Their Disproportionate Removal from Capital Juries.

1. The history and present-day administration of the criminal justice system is racially discriminatory.

Justice Liu recently commented, “Countless studies show that Black Americans are disproportionately subject to police and court intervention, even when they are no more likely than whites to commit offenses warranting such coercive action.” *People v. Triplett*, 48 Cal. App. 5th 655, 689 (2020) (Liu, J., dissenting from the denial of review); *see id.* at 689-91 (discussing the research). The use of the criminal justice system as a vehicle for segregating and subjugating Black Americans was far from a uniquely Southern phenomenon. On the contrary, “disparate enforcement of various laws against ‘suspicious characters,’ disorderly conduct, keeping and visiting disorderly houses, drunkenness, and violations of city ordinances made possible new forms of everyday surveillance and punishment in the lives of black people in the Northeast, Midwest, and West.”²⁷ As

²⁷ Elizabeth Hinton et al., Vera Inst. of Just., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal*

reflected in the persistence of racist laws, biased policing, and selective prosecution, harmful stereotypes have been used to justify further discriminatory policies.²⁸

Mass incarceration boomed as a result of these racially discriminatory stereotypes of African-American criminality.²⁹ By the 1990s, “the Sentencing Project reported that the number of people behind bars in the United States was unprecedented in world history,”³⁰ and stands today at almost 2.3 million people.³¹ The California experience has been the same: From 1990 to 1999, California experienced a growth in the incarcerated population of 70.5%.³² California had the largest state prison

Justice System 2 (2018) (citation omitted), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

²⁸ See *id.* at 3 (citing Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* 4 (2011)).

²⁹ See, e.g., Nazgol Ghandnoosh, Sent’g Project, *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies* 7-8 (2014), <https://www.sentencingproject.org/wp-content/uploads/2015/11/Race-and-Punishment.pdf> (demonstrating that the “[s]trong support for punitive policies” that emerged in the late 1960s and grew dramatically over the next four decades was racially patterned”).

³⁰ Michelle Alexander, *The New Jim Crow* 56 (2010).

³¹ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Pol’y Initiative (2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

³² *State-by-State Data: Detailed State Data – Prison Population over Time (California)*, Sent’g Project (2016) [hereinafter *State-by-State Data: California Prison Population*], <https://www.sentencingproject.org/the-facts/#detail?state1Option=California&state2Option=Federal>

population in the nation at its height,³³ and although the numbers have recently been reduced,³⁴ it remains in second place as of 2018.³⁵

Black men are about 13 percent of the U.S. male population, but make up nearly 35 percent of all men with a sentence of more than one year.³⁶ Black people are incarcerated in state prisons at 5.1 times the rate of white people.³⁷ Again, California is no different. In a 2016 report, the Sentencing Project found that one in every 22 adult Black men in California was imprisoned.³⁸ In 2017, Black Californians were incarcerated in state prisons at a rate 8.0 times that of White Californians.³⁹

These disparities play out not only in capital-case charging as discussed in Section I.A, above, but in charging decisions across the board. For example, federal “prosecutors . . . are twice as likely to charge African Americans with offenses that carry a

(using 2018 U.S. Department of Justice data and showing, in hovertext, an increase of the California prison population from 94,122 in 1990 to 160,517 in 1999).

³³ *Id.*

³⁴ Sent’g Project, *Fewer Prisoners, Less Crime: A Tale of Three States* 7, <https://sentencingproject.org/wp-content/uploads/2015/11/Fewer-Prisoners-Less-Crime-A-Tale-of-Three-States.pdf> (explaining the causes of the population reduction).

³⁵ *State-by-State Data: California Prison Population*, *supra* (utilizing 2018 U.S. Department of Justice data).

³⁶ Hinton et al., *supra*, at 2.

³⁷ *Id.*

³⁸ Sent’g Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* 5 (2016).

³⁹ Vera Inst. of Just., *Incarceration Trends in California* 2 (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-california.pdf>.

mandatory minimum sentence than similarly situated whites.”⁴⁰ And state “prosecutors are also more likely to charge black rather than similar white defendants under habitual offender laws.”⁴¹ In addition, judges are more likely to “sentence people of color than whites to prison and jail and to impose longer sentences,” even after accounting for other variables.⁴²

Across the nation, Black Americans and White Americans have significantly different experiences with law enforcement. Black Americans are “more likely to be stopped by police than white or Hispanic residents, both in traffic stops and street stops.”⁴³ Once stopped, Black drivers are “far more likely to be searched and arrested” than White drivers.⁴⁴ This is true even though police find contraband at a lower rate when they search Black drivers as compared to White drivers.⁴⁵ In California, African Americans are arrested for felonies at approximately three times their percentage of the population,⁴⁶ and accounted

⁴⁰ Sent’g Project, *Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance* 7-8 (2018), <https://www.sentencingproject.org/wp-content/uploads/2018/04/UN-Report-on-Racial-Disparities.pdf>.

⁴¹ *Id.* at 8.

⁴² Ghandnoosh, *supra*, at 26.

⁴³ Alexei Jones, *Police Stops Are Still Marred by Racial Discrimination, Data Shows*, Prison Pol’y Initiative (Oct. 12, 2018), <https://www.prisonpolicy.org/blog/2018/10/12/policing/>.

⁴⁴ Sent’g Project, *Report to the United Nations*, *supra*, at 5.

⁴⁵ *Id.*

⁴⁶ Hinton et al., *supra*, at 2; Cal. Dep’t of Just., *Crime in California* 38, tbl.31 (2019), <https://data-openjustice.doj.ca.gov/sites/default/files/2020->

for 15.1% of all police stops.⁴⁷ Once detained, officers searched African Americans 2.9 times the rate at which they searched White detainees, even though they were less likely to find evidence of criminality when searching individuals of color than Whites.⁴⁸

Nationally, Black Americans are also disproportionately the victims of police violence. In 2018, police “were twice as likely to threaten or use force” against people of color than White people during stops.⁴⁹ Black men are “2.5 times more likely than White men and boys to die during an encounter with cops.”⁵⁰ About one in 1,000 Black men in America will be killed by the police.⁵¹ In 2018, though then only 2.266% of the California population, African-American adult men accounted for at least 19.8% of police killings of those whose age and racial or ethnic identity are known.⁵²

06/Crime%20In%20CA%202019.pdf (reporting that 30.4% of arrestees were White, 42.7% were Hispanic, 20.7% were Black, and 6.2% were other).

⁴⁷ Racial & Identity Profiling Advisory Bd., *Annual Report 2020*, at 22 (2020), <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>.

⁴⁸ *Id.* at 9.

⁴⁹ Jones, *supra*.

⁵⁰ Amina Khan, *Getting Killed by Police Is a Leading Cause of Death for Young Black Men in America*, L.A. Times (Aug. 6, 2019), <https://www.latimes.com/science/story/2019-08-15/police-shootings-are-a-leading-cause-of-death-for-black-men>.

⁵¹ *Id.*

⁵² See Am. Cmty. Surv., U.S. Census Bureau, *Sex by Age (Black or African American Alone) – 2018: ACS 1-Year Estimates Detailed Tables, California*, <https://data.census.gov/cedsci/table?q=race&t=Age%20and%20Se>

2. As a result of historical and present-day discrimination, Black Americans and White Americans tend to have significantly different views of the criminal justice and capital punishment systems.

As Justice Liu observed more than once, “[I]t is a troubling reality, rooted in history and social context, that our black citizens are generally more skeptical about the fairness of our criminal justice system than other citizens.” *People v. Johnson*, 8 Cal. 5th 475, 535 (2019) (Liu, J., dissenting) (quoting *People v. Harris*, 57 Cal. 4th 804, 865 (2013) (Liu, J., concurring)). More than a half-century of social science research confirms that (1) Black people and White people differ in their views about the fairness of the criminal justice system and (2) Black people are significantly more likely to oppose capital punishment than are

[x%3ABlack%20or%20African%20American%3ARace%20and%20Ethnicity&g=0400000US06&y=2018&d=ACS%201-Year%20Estimates%20Detailed%20Tables&tid=ACSDT1Y2018.B01001B&hidePreview=false](https://data.census.gov/cedsci/table?g=0400000US06&y=2018&d=ACS%201-Year%20Estimates%20Detailed%20Tables&tid=ACSDT1Y2018.B01001B&hidePreview=false) (showing the total population of adult African American men in California was 887,252 in 2018); Am. Cmty. Surv., U.S. Census Bureau, *ACS Demographic and Housing Estimates – 2018: ACS 5-Year Estimates Data Profiles, California*, <https://data.census.gov/cedsci/table?g=0400000US06&d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2018.DP05&hidePreview=true> (showing the total population of California was 39,148,760 in 2018); see *Fatal Force*, Wash. Post, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (updated Oct. 8, 2020) (showing in 2018, 16 of the 81 victims of police killings in California whose race and age are known were African American adult men age 18 and over).

White people. Below, amicus provides a brief summary of the empirical findings on these points.

“African Americans and Whites do not conceptualize ‘American justice’ in the same terms. Where White citizens tend to see the scales of justice as reasonably balanced, their African American counterparts believe that unfairness, based on race, is integral to the operation of the criminal justice system.”⁵³

“Almost 80% of African Americans—as compared with 30% of Whites—consider the treatment of people of color by the criminal justice system to be a significant problem.”⁵⁴

Almost every public opinion poll and social scientific survey conducted in the United States in the last fifty years found a substantial difference between African Americans’ and White Americans’ support for the death penalty.⁵⁵ The “long-standing, durable racial divide” in death penalty support should not be

⁵³ James D. Unnever & Francis Cullen, *Reassessing the Racial Divide in Support for Capital Punishment: The Continuing Significance of Race*, 44 J. Rsch. Crime & Delinq. 124, 146-47 (2007); see also Elisabeth Semel et al., *Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of African-American and Latinx Jurors* 37, 41, 113 n.389, 117-18 nn.441-61 (2020).

⁵⁴ John Gramlich, *From Police to Parole, Black and White Americans Differ Widely in Their Views of Criminal Justice System*, Pew Rsch. Ctr. (May 21, 2019), <https://www.pewresearch.org/fact-tank/2019/05/21/from-police-to-parole-black-and-white-americans-differ-widely-in-their-views-of-criminal-justice-system/>; see also, *Triplett*, 48 Cal. App. 5th at 688-91 (Liu, J., dissenting from the denial of review) (discussing studies reaching the same conclusions); Semel et al., *supra*, at 41-43 & 118-20 nn.449-91.

⁵⁵ See Attachment B.

treated as the product of chance, but instead understood within a legacy of state-supported racial subordination. James Unnever et al., *Race, Racism, and Support for Capital Punishment*, 37 Crime & Just. 45, 81 (2008).

D. The Selection of California Jury Venires Perpetuates the Underrepresentation of African Americans.

The right to jury service was among the full citizenship rights systematically denied to African Americans following the Civil War.⁵⁶ Even after the United States Supreme Court held unconstitutional state statutes that, on their face, restricted jury service to White men in *Strauder v. West Virginia*, 100 U.S. 303, 310 (1879), institutional opposition to black enfranchisement and political participation took hold in the South.⁵⁷ See Section I.B above.

In 1935, in *Norris v. Alabama*, the Supreme Court finally addressed the total and systematic exclusion of African Americans from jury pools in the second trial of one of the “Scottsboro Boys.”⁵⁸ Following *Norris*, however, “state officials

⁵⁶ Equal Just. Initiative, *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy* 8-10 (2010) [hereinafter EJI, *Illegal Racial Discrimination*], <https://eji.org/wp-content/uploads/2019/10/illegal-racial-discrimination-in-jury-selection.pdf>; see also Semel et al., *supra*, 2-5, 82 nn.2-28.

⁵⁷ See EJI, *Illegal Racial Discrimination*, *supra*, at 9. Although laws no longer explicitly barred African Americans from jury service, in many states, “local officials achieved the same result by . . . implementing ruses to exclude black citizens.” *Id.* at 10.

⁵⁸ *Norris v. Alabama*, 294 U.S. 587, 588 (1935); *id.* at 597 (holding that the “long-continued, unvarying, and wholesale exclusion” of

became more imaginative in their efforts to limit minority participation on juries,” allowing token African Americans to serve on juries to avoid total exclusion.⁵⁹ And the discriminatory use of peremptory challenges “immediately counteracted” the limited gains of African-American inclusion on the jury rolls.⁶⁰ It was not until the 1960s and 1970s, when the Supreme Court adopted a “fair cross-section” standard, requiring the jury and grand jury pools to reflect the demographics of the jurisdiction, that representation of citizens of color in jury pools was improved.⁶¹

Some jurisdictions in California continued the wholesale exclusion of Black jurors, even if statutes prohibited the practice. For example, in 1939, in *People v. Hines*, a Black defendant’s conviction by an all-White jury was overturned because, despite constituting 8% of the population, “no negro had ever been placed on the venires or called for jury service in criminal cases in Merced county.”⁶² This was the result of the “custom of the

African Americans from the grand and petit jury venires denied [Norris] equal protection under the Fourteenth Amendment; see generally Dan T. Carter, *Scottsboro: A Tragedy of the American South* (rev. ed. 1979).

⁵⁹ Jeffrey S. Brand, *The Supreme Court, Equal Protection, and Jury Selection: Denying that Race Still Matters*, 1994 Wis. L. Rev. 511, 584, 556 (1994).

⁶⁰ EJI, *Illegal Racial Discrimination*, *supra*, at 12; see also Brand, *supra*, at 564.

⁶¹ EJI, *Illegal Racial Discrimination*, *supra*, at 11; see e.g., *Taylor v. Louisiana*, 419 U.S. 522, 531-32 (1975).

⁶² *People v. Hines*, 12 Cal. 2d 535, 538 (1939).

officers to exclude negroes in selecting and impaneling juries” rather than the law as written.⁶³

The legacy of underrepresentation in California begins with the selection (and exclusion) of jurors drawn in our jury venire system.⁶⁴ Currently, every California county satisfies the representative cross-section requirement by using only the Registrar of Voters (“ROV”) and Department of Motor Vehicles (“DMV”) databases as jury source lists.⁶⁵ Multiple studies have shown that using only ROV and DMV records as source lists results in the underrepresentation of African Americans.⁶⁶ One study revealed that when only these two lists were used, African Americans were underrepresented by 18.92% relative to their numbers in the population.⁶⁷

⁶³ *Id.* at 539.

⁶⁴ Hiroshi Fukurai, *The Representative Jury Requirement: Jury Representativeness and Cross Sectional Participation from the Beginning to the End of the Jury Selection Process*, 23 Int’l J. Compar. & Applied Crim. Just. 55, 57, 62, 74 (1999) (finding that African Americans are disproportionately excluded throughout the jury selection process in California courts).

⁶⁵ See Cal. Civ. Proc. Code § 197(a)-(b); Jud. Council of Cal., *Final Report: Task Force on Jury System Improvements* 10 (2003).

⁶⁶ Hiroshi Fukurai & Edgar W. Butler, *Sources of Racial Disenfranchisement in the Jury and Jury Election System*, 13 UCLA Nat’l Black L.J. 238, 250 (1994); Fukurai, *supra*, at 56; David Kairys et al., *Jury Representativeness: A Mandate for Multiple Source Lists*, 65 Calif. L. Rev. 776, 819 (1977) (arguing that the use of multiple source lists increases minority representation in jury pools).

⁶⁷ Fukurai, *supra*, at 70 tbl.2.

Underrepresentation was long exacerbated by California's exclusion of citizens with a felony conviction from jury service.⁶⁸ Last year, the legislature passed and amicus approved Senate Bill 310, permitting many individuals convicted of felonies to serve on juries, a significant step toward diversifying our venires.⁶⁹ However, even when they are not disenfranchised by state laws, African Americans face additional socioeconomic barriers that reduce the likelihood that they will appear on ROV lists at the same rates as White Californians.⁷⁰

⁶⁸ See Cal. Elec. Code § 2101 (amended, effective Jan. 1, 2020, to remove the provision disenfranchising those on parole for a felony); *State-by-State Data: Felony Disenfranchisement Rate*, Sent'g Project (2016), <https://www.sentencingproject.org/the-facts/#map?dataset-option=FDR> (showing, in hover text, that the felony disenfranchisement rate for African Americans in California was over four times that of all other Californians).

⁶⁹ S. 310, 2019-2020 Leg., Reg. Sess., 2019 Cal. Stat. 5237, 5238 (approved by Governor, Oct. 8, 2019, ch. 591) (to be codified at Cal. Civ. Proc. Code § 203), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB31 (removing the disqualification from jury service of persons convicted of felonies who have completed their sentences); see *Governor Newsom Signs Criminal Justice Bills to Support Reentry, Victims of Crime and Sentencing Reform*, Off. Governor Gavin Newsom (Oct. 8, 2019), <https://www.gov.ca.gov/2019/10/08/governor-newsom-signs-criminal-justice-bills-to-support-reentry-victims-of-crime-and-sentencing-reform/>.

⁷⁰ Fukurai, *supra*, at 67, 76; Hiroshi Fukurai et al., *Where Did Black Jurors Go? A Theoretical Synthesis of Racial Disenfranchisement in the Jury System and Jury Selection*, 22 J. Black Stud. 196, 197-98, 201-03 (1991); *id.* at 202 (showing that people with unstable employment experience higher rates of residential and geographic mobility); Ronald J. McAllister et al., *Residential Mobility of Blacks and Whites: A National*

Several studies have demonstrated that using multiple source lists increases the percentage of African Americans in the “master jury list.”⁷¹ This past session, the California Legislature took a meaningful step to “promote fairness, diversity, and legitimacy in California’s jury system.”⁷² by enacting Senate Bill 592, which, as of January 1, 2022, would deem “[t]he list of resident state tax filers [as] an appropriate source list for selection of jurors.”⁷³ On September 28, amicus helped the state move toward increased jury representation by approving the bill.⁷⁴

Longitudinal Survey, 77 Am. J. Socio. 445, 448 (1971) (finding that 48% of African Americans were geographically transient, compared to only 25.5% of Whites, making it less likely African Americans would appear on ROV lists).

⁷¹ See e.g., Paula L. Hannaford-Agor, *Systematic Negligence in Jury Operations: Why the Definition of Systematic Exclusion in Fair Cross Section Claims Must Be Expanded*, 59 Drake L. Rev. 761, 780 (2011) (suggesting that multiple source lists will increase “demographic representation” of minorities).

⁷² S. Rules Comm., Floor Analysis: SB 592, 2019-2020 Leg., Reg. Sess., at 4 (2020), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB592 (follow “08/31/20- Senate Floor Analyses”) (quoting the bill’s author).

⁷³ S. 592, 2019-2020 Leg., Reg. Sess. (approved by Governor, Sept. 28, 2020, ch. 230, sec. 1, § 197(b)(2)) (to be codified at Cal. Civ. Proc. Code § 197(b)(2)), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB592.

⁷⁴ *Id.*

E. Death Qualification Dilutes African Americans' Viewpoints and Produces Juries that Are Conviction- and Death-Prone and Likely to Be Influenced by Racial Bias.

As the nation's capital punishment system is inextricably linked to the legacy of slavery and racial terror, so too is death qualification. "Neither at common law, nor in Blackstone's England, did the death-qualification of jurors exist." G. Ben Cohen & Robert J. Smith, *The Death of Death Qualification*, 59 Case W. Rsr. L. Rev. 87, 92 (2008). The first "challenges to jurors with 'conscientious scruples' against a particular law" appear in cases involving slaves. *Id.* at 93 (citation omitted). The trial of abolitionist John Brown in Virginia in 1859 is one of the earliest reported cases in which a judge death qualified the jury. *Id.* at 96.

Fifty years of social scientific study of death qualification, including research specific to California capital trials, leaves no doubt that death qualification produces the following outcomes: the disproportionate removal of Black people from the jury pool; a seated jury that is more conviction- and death-prone than the original venire; and a jury that is susceptible to the influence of racial bias. Recently, a member of this Court acknowledged the "range" of empirical evidence that supports these conclusions and observed that "removal of jurors for cause is an equally if not more significant contributor to the exclusion of Black jurors" than discriminatory peremptory challenges. *People v. Suarez*, 10 Cal. 5th 116, 192-94 (2020) (Liu, J., concurring) (citing some of the social science research to which amicus refers to below).

First, based upon their opposition to capital punishment, African Americans are significantly more likely than White people to be excluded from capital juries through death qualification.⁷⁵ There is a consistent difference in the exclusion rates over several decades of study; the percentage of African Americans excluded was double to triple that of Whites.⁷⁶

Second, death qualified juries are also biased in favor of a death sentence in that a disturbingly significant percentage of these jurors do not understand penalty phase instructions, do not follow the law, and are motivated to vote for death based on erroneous beliefs about the death penalty and/or life in prison without possibility of parole.⁷⁷

Third, Black people and White people generally differ in their views about mitigating and aggravating evidence, with Black people significantly more receptive to mitigating evidence than are White people.⁷⁸ “[A]s a function of the defendant’s race,”

⁷⁵ See Attachment B; see also *Lockhart v. McCree*, 476 U.S. 162, 201 (1987) (Marshall J., dissenting) (observing that “[b]ecause opposition to capital punishment is significantly more prevalent among blacks than among whites, the evidence suggests that death qualification will disproportionately affect the representation of blacks on capital juries”); *Hovey v. Superior Court*, 28 Cal. 3d 1, 54, 56-57 (1980) (including studies that demonstrated the difference in death-penalty support between Black people and White people).

⁷⁶ See Attachment B.

⁷⁷ See *id.* There is also ample evidence that death qualification skews the seated jury in favor of conviction. See, e.g., Mona Lynch & Craig Haney, *Death Qualification in Black and White: Racialized Decision Making Death-Qualified Juries*, 40 L. & Pol’y 148, 148 (2018) (listing studies).

⁷⁸ See Attachment B.

there are “striking differences” in how White male jurors evaluate “all of the mitigating evidence and some of the aggravating evidence.”⁷⁹ Overall, White jurors “are much less receptive to mitigation” than Black jurors in Black-defendant/White-victim cases.⁸⁰ And African-American jurors are more likely than White jurors to “keep the sin separate from the sinner” no matter what the race of the defendant or the victim; that is, they are more likely to be able to see the defendant as a human being.⁸¹

It is difficult to overstate the significance of the third finding in relation to the life-or-death determination by California juries as “[a] majority of the 11 statutory factors [under Penal Code section 190.3] can only be mitigating.” *People v. Hillhouse*, 27 Cal. 4th 469, 508 (2002) (internal citations and quotation marks omitted). A California study found that a much larger share of African-American respondents than White respondents weigh mitigating factors in favor of the statutorily and judicially intended direction of mitigating evidence.⁸² It concluded that as a group, African-American potential jurors

⁷⁹ Mona Lynch & Craig Haney, *Capital Jury Deliberation: Effects on Death Sentencing, Comprehension, and Discrimination*, 33 L. & Hum. Behav. 481, 494 (2009).

⁸⁰ William J. Bowers et al., *Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant Is Black and the Victim Is White*, 53 DePaul L. Rev. 1497, 1532 (2004).

⁸¹ Stephen P. Garvey, *The Emotional Economy of Capital Sentencing*, 75 N.Y.U. L. Rev. 26, 47 (2000).

⁸² Lynch & Haney, *Death Qualification in Black and White*, *supra* 159, 160-63 tbls.5 & 6.

“rarely inappropriately considered mitigating evidence as favoring a death sentence.”⁸³

Fourth, death qualification also yields juries that are prone to the influence of racial bias. Racial prejudice is a “comparatively strong predictor of white support for the death penalty.”⁸⁴ Indeed, racial resentment “is one of the most substantive and consistent predictors” for endorsement of both punitive crime policies and capital punishment.⁸⁵ Importantly, support for capital punishment is not confined to White people whom one would describe as overtly or traditionally racist, but particularly includes White people whose negative or mixed views about African Americans are more subtle.⁸⁶ There is evidence that White jurors demonstrate “higher levels of implicit racial bias than non-White jurors”;⁸⁷ and the exclusion of jurors of color through death qualification contributes to higher levels of racial bias on the seated jury because jurors who harbor less implicit and explicit bias have been removed.⁸⁸

⁸³ *Id.* at 164.

⁸⁴ Joe Soss et al., *Why Do White Americans Support the Death Penalty*, 65 J. Pol. 397, 397 (2003).

⁸⁵ James Unnever & Francis T. Cullen, *The Social Sources of Americans’ Punitiveness: A Test of Three Competing Models*, 48 Criminology 99, 117 (2010).

⁸⁶ See e.g., Unnever et al., *supra*, at 64–65, 69.

⁸⁷ Justin D. Levinson et al., *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. Rev. 513, 553-54, 557 (2014) (describing a study of jury-eligible citizens in six states with high death-sentencing rates, including California, in which participants were diverse by measures such as race).

⁸⁸ *Id.* at 559-60.

In sum, the deleterious effects of death qualification are not simply due to the removal of a disproportionate number of African Americans from the capital jury. They also stem from the increased representation of White men on the seated jury.⁸⁹ The result is “a group that is not only attitudinally skewed in favor of the death penalty overall but that also, in any given case, may be significantly less receptive to the defense’s case in mitigation and more highly attuned to the prosecution’s case for death.”⁹⁰

F. The *Batson/Wheeler* Regime Exacerbates the Racially Discriminatory Effects of Death Qualification.

For more than four decades, the Court has utilized a three-step procedure to determine whether a peremptory challenge was based on race or another impermissible reason. *See Batson v. Kentucky*, 476 U.S. 79, 93-94, 96 (1986); *People v. Wheeler*, 22 Cal. 3d 256, 280-82 (1978).⁹¹ As interpreted by this Court, the

⁸⁹ Lynch & Haney, *Death Qualification in Black and White*, *supra*, at 167; *id.* (finding that White male jurors are “particularly susceptible to racial bias against African American capital defendants” (citing Mona Lynch & Craig Haney, *Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the “Empathic Divide,”* 45 L. & Soc’y Rev. 69, 91 (2011)); Levinson et al., *supra*, at 558 (finding that “death qualification leads to more male and White juries”).

⁹⁰ Lynch & Haney, *Death Qualification in Black and White*, *supra*, at 167.

⁹¹ *See Johnson v. California*, 545 U.S. 162, 168 (2005) (rejecting this Court’s “more likely than not” standard at step one).

*Batson*⁹² framework permits prosecutors to further strip African Americans from capital juries based on their disproportionate opposition to capital punishment relative to White people. Any prospective juror whose reservations about imposing the death penalty are not substantial enough to sustain a cause challenge is vulnerable to a prosecution peremptory strike because the Court has repeatedly held that “this demonstrated reluctance is a race-neutral reason that can justify a peremptory challenge.” *People v. Lomax*, 49 Cal. 4th 530, 572 (2010).⁹³ Of the 142 capital cases decided by this Court between 1989 and the end of 2019 involving a *Batson* claim,⁹⁴ prosecutors frequently relied in significant part on a prospective juror’s death penalty scruples in exercising their strikes.⁹⁵

In February of this year, Assemblymember Shirley Weber introduced Assembly Bill 3070 (“A.B. 3070”) to replace the *Batson*

⁹² Amicus uses the shorthand “*Batson*” to refer to the “*Batson/Wheeler*” procedure. See, e.g., *People v. Lenix*, 44 Cal. 4th 602, 610 n.5 (2008) (“An objection under *Wheeler* suffices to preserve a *Batson* claim on appeal.”).

⁹³ See also *People v. Manibusan*, 58 Cal. 4th 40, 83 (2013) (holding that while Juror 156’s answers on the death penalty may have been insufficient for a cause challenge, they were a race-neutral reason for the prosecutor’s peremptory challenge); *People v. Jurado*, 38 Cal. 4th 72, 106 (2006) (holding that “reservations about the death penalty provided a permissible basis for a prosecutor’s exercise of a peremptory challenge”).

⁹⁴ See Semel et al., *supra*, at 52.

⁹⁵ See, e.g., *People v. Armstrong*, 6 Cal. 5th 735, 769-772, 774-76, 782-83 (2019); *People v. Melendez*, 2 Cal. 5th 1, 11-13 (2016); *People v. Hensley*, 59 Cal. 4th 788, 800-01 (2014); *People v. Williams*, 56 Cal. 4th 630, 650-51 (2013).

framework.⁹⁶ In June, the Berkeley Law Death Penalty Clinic published report examining the history, legacy, and ongoing practice of excluding people of color—especially African Americans—from California juries through prosecutors’ peremptory challenges. *See Semel et al., supra*, 3-5.

Two of the report’s findings are particularly relevant to the Court’s present inquiry. First, prosecutors’ reasons for striking Black and Latinx jurors frequently correlate with racial stereotypes, such as the juror’s demeanor; appearance; close relationship with someone who has been stopped, arrested, or convicted of a crime; or distrust of the criminal justice system. *See id., supra*, at 13-22, 15 fig.3, 22 fig.4. Second, over time, California courts’ *Batson* jurisprudence and prosecution jury selection training have been mutually reinforcing. The judiciary’s endorsement of race-neutral reasons that apply disproportionately to African-American and Latinx jurors encourages their use. *See id.* at v-vi, 22-24, 24 figs.5 & 6, 44-52.

The report recommended passage of A.B. 3070, which the legislature enacted and amicus approved on September 30, 2020.⁹⁷ The California Legislature’s findings declare that the use of peremptory challenges in criminal cases “has disproportionately harmed African Americans, Latinos, and other people of color.” A.B. 3070, sec. 1. In particular, “many of the

⁹⁶ A.B. 3070, 2019-2020 Leg., Reg. Sess., https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3070.

⁹⁷ *Semel et al., supra*, at viii, 69-70; A.B. 3070 (approved by Governor, Sept. 30, 2020, ch. 318).

reasons routinely advanced to justify the exclusion of jurors from protected groups are in fact associated with stereotypes about those groups or otherwise based on unlawful discrimination.” *Id.*

This preamble echoed concerns voiced by members of this Court, by Justice Humes of the Court of Appeal, other federal and state court judges, and extensive academic research.⁹⁸ Together they demonstrate the profound failure of the *Batson* regime to ensure that jurors of color, especially African Americans are present in the jury box and that their viewpoints are reflected in verdicts rendered throughout the state. Amicus signed A.B. 3070 with the aim of eliminating racial discrimination in jury selection.

⁹⁸ See e.g., *People v. Miles*, 9 Cal. 5th 513, 617 (2020) (Liu, J., dissenting) (“It is past time to ask whether the “*Batson* framework, as applied by this court, must be rethought in order to fulfill the constitutional mandate of eliminating racial discrimination in jury selection.”); *Johnson*, 8 Cal. 5th at 544, 546 (Cuéllar, J., with Liu, J., dissenting) (criticizing the majority’s failure to scrutinize evidence that “the prosecutor was targeting African American jurors” and thus, “unwittingly provid[ing] a road map for ensuring that unlawful discrimination evades judicial scrutiny”); Semel et al., *supra*, at 70 (discussing the Court’s announcement of a work group to “study whether modification or additional measures are needed to guard against impermissible discrimination in jury selection” and quoting the Court’s news release); *People v. Bryant*, 40 Cal. App. 5th 525, 544 (2019) (Humes, Presiding J., with Banke, J., concurring) (describing “the serious shortcomings with the *Batson* framework” as applied by this Court and “calling for meaningful reform”); Semel et al., *supra*, 67-69 (discussing calls for reform by members of the bench and by academics as well as Washington Supreme Court General Rule 37).

II. REQUIRING UNANIMITY AND PROOF BEYOND A REASONABLE DOUBT WILL REDUCE RACIAL DISCRIMINATION AND ARBITRARINESS IN CAPITAL SENTENCING.

A. Non-Unanimous Jury Verdicts Entrench White Control of the Jury Box.

1. Louisiana's and Oregon's non-unanimous jury rules were designed to nullify black jury service mandated by the Reconstruction Amendments.

This year, the United States Supreme Court declared unconstitutional Louisiana and Oregon laws allowing non-unanimous jury verdicts. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). The history of these laws, the reasons they are unconstitutional, and the parallels to California are important to this Court's consideration of the role of unanimity in the penalty phase of California capital trials.

Faced with the prospect of full political power for Black citizens following the ratification of the Fourteenth Amendment and the passage of the Civil Rights Act of 1875, delegates to the Louisiana constitutional convention convened to craft “race-neutral language” that would survive legal challenge but nonetheless “establish the supremacy of the white race.” Thomas Ward Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1615-16 (2018) (citation omitted). Out of this convention was born the state's non-unanimous jury rule, a provision that “ensured that black votes in the jury box (like black votes at the ballot box) would be diluted to the point of irrelevance.” *Id.* at 1619-20.

Louisiana's experience with integrated juries in the years leading up to the convention led to the development of set piece narratives about the Black juror that have persisted in less overt forms to this day. *Id.* at 1600-04; *see* Section II.A.2, below. Prior to the adoption of non-unanimity, Louisiana newspapers voiced fears that the presence of a single “obstreperous colored juror” could hold out and force a “compromise verdict.” Frampton, *supra*, at 1603 (citation omitted). Black jurors were accused of demonstrating “untoward leniency” for Black defendants and voting along “the color line” rather than on an evaluation of the evidence. *Id.* (citation omitted). There was alarm that under unanimous jury requirements, integrated juries would make it impossible to convict Black defendants. *Id.* at 1614.

Ultimately, Louisiana embraced non-unanimous verdicts as a way to “ensur[e] white jurors’ ability to convict Black defendants over the dissent of Black jurors” and thus maintain their control within an integrated jury box. Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. in Support of Petitioner at 15, *Ramos*, 140 S. Ct. 1390 (No. 18-5924). Oregon’s adoption of non-unanimity can be similarly traced to the “rise of the Ku Klux Klan and efforts to ‘dilute the influence of racial, ethnic, and religious minorities on Oregon juries.’” *Ramos*, 140 S. Ct. at 1394 (citation omitted).

As these states understood, non-unanimity removed minority voices from jury deliberations just as thoroughly as barring them from the jury altogether, for just as much is lost “when the jury system excludes voices” as “when the voices are

present, but need not be considered, because the jury can reach a non-unanimous verdict without them.” Brief for States of New York et al. as Amici Curiae in Support of Petitioner at 19, *Ramos*, 140 S. Ct. 1390 (No. 18-5924) (including the signature of Xavier Becerra, Attorney General of the State of California). Non-unanimity thus provided a facially race-neutral “end run around the Fourteenth Amendment.” Brief Amici Curiae of the ACLU & the ACLU Foundation of Louisiana, in Support of Petitioner at 28, *Ramos*, 140 S. Ct. 1390 (No. 18-5924).

The Supreme Court’s decision to strike down Louisiana’s and Oregon’s non-unanimous verdict standards for serious crimes was made in light of these “clear” Jim Crow origins. *Ramos*, 140 S. Ct. at 1394. In response to the dissent’s insistence that the Sixth Amendment analysis “disregard” these racist histories, the Court responded: “[I]f the Sixth Amendment calls on judges to assess the functional benefits of jury rules . . . how can that analysis proceed to ignore the very functions those rules were adopted to serve?” *Id.* at 1401 n.44. In short, the functional effects of non-unanimity, understood by its adopters as maintaining “the supremacy of the white race,” must not be ignored. *See id.* at 1394 (internal quotation marks and citation omitted).

2. Attacks on California's unanimity requirement were racially motivated attempts to suppress minority voices in jury deliberations.

To fully understand the meaning of California's unanimity requirement, it is important to look to the motivations and forces behind a movement in the mid-1990s that sought its eradication. *See Ramos*, 140 S. Ct. at 1394 (evaluating non-unanimity rules in light of the “motivating factor” of race in their adoption). While ultimately unsuccessful, legislative assaults on the California Constitution's unanimity guarantee, *see* Cal. Const. art. 1, § 16, were driven by political fears that racially diverse juries were failing to convict Black men.⁹⁹ At bottom, the motivations and ambitions of the campaign paralleled Louisiana's and Oregon's earlier embrace of non-unanimous verdicts to undermine the participation of people of color, especially African Americans, on juries. *See Ramos*, 140 S. Ct. at 1394.

Between 1995 and 1996, politicians and public figures launched three assaults on the unanimity requirement: two as constitutional amendments in the California legislature and one as a proposed ballot initiative. James Kachmar, *Silencing the Minority: Permitting Nonunanimous Jury Verdicts in Criminal Trials*, 28 Pac. L.J. 273, 291-94 (1996). The California legislature's efforts took the form of Senate Constitutional

⁹⁹ *See* Bill Boyarsky, *D.A. Says System Needs a Shake-Up*, L.A. Times, May 5, 1995, at B1 (quoting Los Angeles County District Attorney Gil Garcetti's concerns that “racial strife in our community” was causing juries to hang or acquit despite “clear” evidence for conviction, and supporting softening unanimity and reasonable doubt requirements to counteract this phenomenon).

Amendment Number 24 (“SCA No. 24”) and Assembly Constitutional Amendment Number 18 (“ACA No. 18”). *Id.*

These legislative attacks on jury unanimity originated from 1990s political campaigns that both generated and capitalized on White fears by placing crime and punishment “center stage in the theater of American political discourse.”¹⁰⁰ ACA No. 18 was introduced by Richard K. Rainey (R-Walnut Creek), a former Contra Costa County sheriff seen as the forerunner of a wave of political candidates in the mid-90s who “w[ore] the badge of law enforcement” and ran in “the season of fear” in which crime was declared “the mother of all issues.” Mark Gladstone & Jerry Gillam, “*Mother of All Issues*” *Reflected in Law Enforcement Candidates*, L.A. Times, May 12, 1994, at A3.

The O.J. Simpson trial captured national attention during this period of intense “public” fear of crime.¹⁰¹ These

¹⁰⁰ Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* 1, 3-4 (1997). The racial overtones of these political appeals are well documented: “Beginning in the 1970s, researchers found that racial attitudes – not crime rates or likelihood of victimization – are an important determinant of white support for ‘get tough on crime’ and antiwelfare measures. Among whites, those expressing the highest degree of concern about crime also tend to oppose racial reform. . . .” Michelle Alexander, *The New Jim Crow* 68-71 (2010).

¹⁰¹ While contemporaneous accounts refer to “public” fears, social science research “findings generally support the view that concern about crime is at least in part an expression of resentment of changing social conditions, especially efforts to eliminate racial injustice,” and is not reflective of a personal sense of actual danger. Frank F. Furstenberg, *Public Reaction to Crime in the Streets*, 40 Am. Scholar 601, 606-07 (1971); *id.* at

apprehensions were fueled by concerns that “racial strife” reflected in jury verdicts was preventing law enforcement from achieving convictions. Boyarsky, *D.A. Says, supra*. Even before the Simpson verdict was announced, public criticism of the trial focused on the racially diverse jury selected in his case. Henry Weinstein & Tim Rutten, *Simpson Case Already Is Rewriting the Rule Book*, L.A. Times, June 11, 1995, at A1. In its coverage of the movement for jury reform that developed during the trial, the *Los Angeles Times* wrote that, “Any discussion of the Simpson trial’s racial dimension inevitably circles back to speculation—much of it skeptical—about the jury.” *Id.* The jury that decided the Simpson verdict was composed of nine Black, two White, and one Latinx juror. William Claiborne, *Simpson Jury’s Speedy Verdict Stuns Court*, Wash. Post, Oct. 3, 1995, at A1. Following the initial selection of eight Black jurors in the case, a “consensus of conventional wisdom” formed that O.J. Simpson had gotten “a great break” because of Black jurors’ skepticism of “the system.” Henry Weinstein, *Simpson Jury Could Defy Conventional Wisdom*, L.A. Times, Nov. 5, 1994, at A1.

The introduction of legislation (SCA No. 24 and ACA No. 18) to eliminate the jury unanimity requirement was prompted by the widespread anticipation that this racially diverse jury might be unable to reach a verdict or would acquit. Bill Boyarsky, *Unanimous Verdicts Also on Trial*, L.A. Times, July 19, 1995, at A17. Indeed, both bills were introduced before the

605 (“As risk of victimization decreases, concern about crime goes up.”).

verdict was announced. *Id.* The connection between the Simpson trial and the legislation was explicit, as Senator Charles Calderon (D-Whittier) announced that he was “motivated” by the Simpson case to put forward SCA No. 24. Bill Boyarsky, *Balky Trial Could Ignite Move to Radically Alter Jury System*, L.A. Times, Apr. 25, 1995, at A18. Lawmakers “opened [a hearing on SCA No. 24] by talking at length about the Simpson case.” Hugh Dellios, *U.S. Justice System Hit by Simpson Trial Fallout*, Chi. Trib., Sept. 18, 1995, at 1.

The two bills were aimed at diluting the power of the California jury in criminal trials. The Senate amendment promised to deliver Californians “higher conviction rates” by reducing the ability of one or two jurors who had doubts about the State’s case to force a re-trial, and characterized hold-out jurors as “irrational.” S. Comm. on Crim. Proc., Bill Analysis: S.C.A. No. 24, 1995-1996 Leg., Reg. Sess. at c, i (1995).¹⁰² The authors also believed non-unanimous verdicts would lead fewer criminal defendants to exercise their right to a jury trial and instead accept plea agreements. *Id.* at c. SCA No. 24 was supported by a deep bench of law enforcement and district attorney associations.¹⁰³

¹⁰² http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_0001-0050/sca_24_cfa_950504_172943_sen_comm.html.

¹⁰³ Supporters included the police chiefs of Barstow, Claremont, Escondido, and Paradise, the San Bernardino County Sheriff, the Santa Ana Police Officers Association, the Doris Tate Crime Victims Bureau, California Correctional Peace Officers Association, the San Diego County District Attorney, and the Sonoma County District Attorney. *Id.* at a.

ACA No. 18 was direct about its ambition:

Potential effect. Will stop the effect of one or two person veto of the jury process, which is often an expression of a dislike or bias against the criminal justice system as opposed to a decision on the law or evidence in a given case.

Assemb. Comm. on Pub. Safety, Bill Analysis: A.C.A. No. 18, 1995-1996 Leg., Reg. Sess., at 4 (1995).¹⁰⁴ Assemblyman Rainey characterized hold-out jurors as the cause of “time-consuming retrial[s]” and compromises between prosecutors and defense attorneys “that produce lower levels of punishment than the conduct warrants.” *Id.* at 2. Thus, the hold-out jurors that ACA No. 18 sought to disempower were those who were voting for acquittal, as the bill took for granted that the prosecution would achieve more punitive results without their involvement in decision-making. *See id.* at 2-4. Law enforcement and district attorney associations also supported ACA No. 18.¹⁰⁵

The announcement of the Simpson verdict seemed to confirm initial “public” perceptions¹⁰⁶ that juries were reaching

¹⁰⁴ http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_0001-0050/aca_18_cfa_950508_112918_asm_comm.html.

¹⁰⁵ *Id.* at 5 (listing supporters of ACA 18 including: the Association of Los Angeles Deputy Sheriffs, Inc., California State Sheriffs’ Association, the California Peace Officers’ Association, the California Police Chiefs’ Association, and the Sacramento County District Attorney).

¹⁰⁶ While Los Angeles Times polling taken a few days after the verdict indicated that 51% of Los Angeles county residents believed that “the mostly minority jury was biased in favor of Simpson,” this consensus masks the divergent opinions between the Black public and the White public. Cathleen Decker, *Most in*

verdicts based on “political or ethnic goals” at the sacrifice of “impartial justice.” Laura Mansnerus, *Under Fire, Jury System Faces Overhaul: Unpopular Verdicts Feed a Belief that the Process Doesn’t Work*, N.Y. Times, Nov. 4, 1995, at 9. Criticism of the outcome zeroed in on the jury and its racial composition, including the Los Angeles County District Attorney’s choice to try the case Downtown, rather than in Santa Monica where the jury pool was 79% White. Miles Corwin, *Location of Trial Can Be Key Factor in Outcome*, L.A. Times, Nov. 27, 1995, at A12.

Both the pre- and post-verdict comments about the Simpson jury by supporters of the bills evidenced the racialized nature of the legislation. *See, e.g.,* Boyarsky, *D.A. Says, supra*. One of Simpson’s defense attorneys, Gerald F. Uelman, concurred. Gerald F. Uelman, *Jury-bashing and the O.J. Simpson Verdict*, 20 Harv. J.L. & Pub. Pol’y 475, 478 (1997). He wrote that the “connection” between the Simpson case and the movements to remove the unanimity protection can be explained by “the growing power of minority jurors and the fear of that power by the white majority.” *Id.*

These political attempts to eliminate unanimous verdicts reveal that, to these California politicians and their supporters,

County Disagree with Simpson Verdict, L.A. Times, Oct. 8, 1995, at A1. The same poll showed nearly two-thirds of White Angelenos (63%) believed the jury was biased, while 71% of Black Angelenos believed the jury was unbiased. *Id.* When asked whether the jurors made their decision because of “personal prejudices” or from “a fair reading of the evidence,” 56% of Whites believed the jury’s verdict was based on personal prejudice, a view shared by only 18% of Black respondents. *Id.*

the state's jury right diluted the ability of predominantly White juries to drive convictions. California's history is thus not immune from the use of non-unanimity "to ensure that African-American juror service would be meaningless," which the Supreme Court repudiated in *Ramos*. 140 S. Ct. at 1394 (citation omitted). This history should similarly inform this Court's understanding of the role of the unanimity protection in California and the interests that are served when it is absent.

B. Unanimity Requirement Would Reduce Racial Discrimination in Death Sentencing.

California Attorney General Xavier Becerra joined as one of nine state attorneys general who filed an amicus brief in support of the petitioner in *Ramos*. Brief for States of New York et al. as Amici Curiae in Support of Petitioner, *supra*. In so doing, he informed the United States Supreme Court, as Mr. McDaniel asserts, that "the unanimity requirement improves the quality of jury deliberations and verdicts." *Id.* at 13. The brief favorably cited the social science research amicus relies upon below for the propositions that the unanimity requirement (1) "results in longer and more careful deliberations," *id.* at 13-16 and (2) "ensures that juries consider the opinions, experience, and perspectives of all community members," *id.* at 17-19.

1. Diverse juries diminish the influence of racial bias in capital sentencing.

Enhancing the quality of deliberations can reduce the influence of racial bias in jury verdicts. Social science research comparing racially diverse and racially homogeneous juries explains how this is so.

Diverse juries diminish the influence of racial bias in capital sentencing. To begin with, the presence of Black jurors (and particularly Black male jurors) substantially reduce the likelihood of a death sentence. William J. Bowers et al., *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Racial Composition*, 3 U. Pa. J. Const. L. 171, 189, 193 (2001). The presence of even one African American juror can affect deliberations. *Id.* at 193. In the absence of any Black male jurors, death sentences were imposed in 71.9% of Black defendant/White victim cases (11.5 points higher than in White defendant/White victim cases), as compared to 42.9% of those cases with one Black male on the jury (22.2 points lower than in White defendant/White victim cases). *Id.* at 192.¹⁰⁷ The difference in outcomes reflects the difference in the deliberative process.

Research on jury diversity sheds light on why a capital jury's racial composition can be so central to reducing bias.

¹⁰⁷ This effect becomes somewhat more pronounced as the number of Black jurors increases. When two or more Black men were on the jury, the death sentencing rate was 36.8%, as compared to a death sentencing rate of 42.9% when one Black man was on the jury. *Id.* at 194.

Racial diversity in the jury increases the likelihood that a fulsome discussion of mitigating circumstances will take place:

Conspicuous in these white male dominated juries is the lack of serious discussion of mitigation In contrast, when there are African Americans, or at least one African-American male, on the jury, conflict is evident, and mitigation is voiced and considered. In addition, there is a tendency for the jurors themselves to acknowledge how race colors their perspectives and how the race of other jurors may do likewise.

William J. Bowers et al., *Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant Is Black and the Victim Is White*, 53 DePaul L. Rev. 1497, 1532 (2004).

Research reflects that racially diverse juries are more inclined to confront contrasting interpretations of the evidence. A 2006 mock-jury study found that racially heterogeneous juries deliberated longer, discussed more of the trial evidence, considered a wider range of information, made fewer factually inaccurate statements while discussing the evidence, and were more likely to correct inaccurate statements as compared to all-White juries. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psych. 597, 606, 608 (2006).¹⁰⁸ A more recent mock-jury study

¹⁰⁸ The triangulation of findings over time in studies employing a range of research methods increases confidence in the findings. See Mario Luis Small, *How to Conduct a Mixed Methods Study: Recent Trends in a Rapidly Growing Literature*, 37 Ann. Rev. Soc. 57, 61 (2011) (describing the “core principle of multimethod

found that racial diversity motivated White jurors to contribute more fact-based, unbiased observations during jury deliberations, thereby reducing racial disparity in trial outcomes. Liana Peter-Hagene, *Jurors' Cognitive Depletion and Performance During Jury Deliberation as a Function of Jury Diversity and Defendant Race*, 43 L. & Hum. Behav. 232, 245 (2019).

Taken together, this research demonstrates that when juries are racially diverse, Black jurors often present different perspectives about the evidence that would otherwise go unacknowledged among a racially homogeneous White jury, much less be integral to the deliberations. These conflicting perspectives provoke a more thorough review of the evidence.

2. Unanimity improves the quality and reliability of the deliberative process.

A unanimity rule changes a jury's approach to its deliberations. One study of mock juries instructed to reach a verdict by a 12 to 0, 10 to 2, or 8 to 4 margin observed striking differences in their basic functioning. Reid Hastie et al., *Inside the Jury* 229 (1983). Compared to unanimous juries, those deciding under a more relaxed standard made far fewer statements conveying information and questions and far more statements directing the jury to take an action and expressing verdict preferences. *Id.* at 95. Once juries operating under 10-of-12 or 8-of-12 rules reached the minimum verdict-rendering faction sizes, the groups usually rejected holdouts, ceased

confirmation—that confidence in one's findings increases when different methods are in agreement").

discussion, and returned a verdict within a few minutes. *Id.* at 95-96.

Without a unanimity requirement, juries are more likely to forgo an “evidence-driven” approach to deliberation in favor of a “verdict-driven” one. *Id.* at 165. While an evidence-driven approach centralizes an “effort to agree upon the single most credible story that summarizes the events at the time of the alleged crime,” a verdict-driven one focuses on each juror’s preferred verdict, discussing evidence to the extent that it supports a position. *Id.* Non-unanimous groups often allowed their majorities to marginalize the perspectives of the minority: “[L]arger factions in majority rule juries adopt a more forceful, bullying, persuasive style because their members realize that it is not necessary to respond to all opposition arguments when their goal is to achieve a faction size of only eight or ten members.” *Id.* at 112.

These differences in functioning produce deliberations that differ qualitatively. Verdict-driven groups “are relatively hurried, cursory on testimony-law connections, less respectful of their own and others’ persuasiveness and openmindedness, and less vigorous in discussion.” *Id.* at 165. A meta-analysis of 206 jury studies found that when unanimity prevented the majority from shutting down deliberations, juries took more time to reach a verdict, were more certain of the accuracy of their findings, and were more influenced by the discussion during deliberations. Dennis J. Devine et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 Psych. Pub. Pol’y &

L. 622, 669 (2001).¹⁰⁹ When unanimity was not required, jurors with minority viewpoints were the likeliest of all opinion groups to reported that they were unable to make all of their arguments before deliberations ceased. Norbert L. Kerr et al., *Guilt Beyond a Reasonable Doubt: Effects of Concept Definition and Assigned Decision Rule on the Judgments of Mock Jurors*, 34 J. Personality Soc. Psych. 282, 290-91 (1976). Conversely, jurors with dissenting viewpoints participated more actively and were perceived as more influential when the verdict had to be unanimous. Hastie et al., *supra*, at 38. When working toward unanimity, jurors “were more effective in actually persuading their members that the final verdict was the appropriate one, [and] engaged in more robust argument. . . .” Jason D. Reichelt, *Standing Alone: Conformity, Coercion, and the Protection of the Holdout Juror*, 40 U. Mich. J.L. Reform 569, 580-81 (2007) (citation omitted).

Unanimous juries also evaluated and discussed the law and evidence more thoroughly, and recalled more of the evidence in retrospect, than did their non-unanimous counterparts. *Id.* at 580; Devine et al., *supra*, at 669. Under a unanimous rule, jurors are more conscientious, more likely to correct their own mistakes about the evidence or the jury instructions, and less likely to make factual errors. Reichelt, *supra*, at 580; Devine et al., *supra*, at 669. They also consider more information. Kim Taylor-

¹⁰⁹ See also Hastie et al., *supra*, at 76, 82-85, 97, 228-229 (observing that when unanimity was not required, deliberations were shorter, less thorough, less serious, and less vigorous than those under a unanimity rule).

Thompson, *Empty Votes in Jury Deliberations*, 113 Harv. L. Rev. 1261, 1273 (2000).

Thus, requiring unanimous decision-making can decrease the influence of racial bias at the penalty phase. When juries ignore divergent perspectives, they invite the influence of racial bias. Members of diverse juries are required to listen to minority perspectives in a way they are not when those perspectives are not voiced. A unanimity rule similarly safeguards deliberations against the danger of disregarding divergent perspectives, leaving less room for racial bias to go unquestioned.

C. A Reasonable Doubt Requirement for the Life-or-Death Verdict Would Also Reduce Racial Bias in Capital Sentencing.

1. As a general proposition, rules increasing clarity help prevent racially biased behaviors.

When it is difficult to obtain a clear understanding of the task at hand, individuals are more likely to rely on racial stereotypes to guide them. For example, when the decision-making task is complicated, racial stereotypes exert a relatively stronger influence on decision-making processes.¹¹⁰ Capital

¹¹⁰ See, e.g., Galen V. Bodenhausen, *Stereotypes as Judgmental Heuristics: Evidence of Circadian Variations in Discrimination*, 1 Psych. Sci. 319, 321 (1990) (finding that subjects relied more strongly on racial and gender stereotypes at the time of day that they were least awake and therefore “less able to engage in more systematic and careful judgment strategies”); Galen V. Bodenhausen & Meryl Lichtenstein, *Social Stereotypes and Information-Processing Strategies: The Impact of Task Complexity*, 52 J. Personality & Soc. Psych. 871, 878-79 (1987) (finding that, when subjects had a complex information-

juries are not exempt from this phenomenon: In one study of mock jurors observing a capital trial, researchers found a significant relationship among race, verdict choice, and comprehension. Mona Lynch & Craig Haney, *Discrimination and Instructional Comprehension: Guided Discretion, Racial Bias, and the Death Penalty*, 24 L. & Hum. Behav. 337, 354 (2000). Among participants with poor comprehension of the jury instructions, the rate of death sentencing for Black defendants increased by almost half as compared to the rate for White defendants (60% versus 41%). *Id.* Among participants with high comprehension of the jury instructions, the rate of death sentencing was the same for White and Black defendants (46%). *Id.*

However, procedural protections that clarify elusive concepts are effective at reducing their influence. For example, several studies have found that participants who completed an evaluative task with clear guidelines were significantly less likely to rely on racial stereotypes than those who were not supplied with clear decision-making guidelines.¹¹¹

processing objective and a racial stereotype was available, they used this stereotype as a way of organizing presented information into a mental representation of the defendant and his behavior).

¹¹¹ See, e.g., Tara L. Mitchell et al., *Racial Bias in Mock Juror Decision-Making: A Meta-Analytic Review of Defendant Treatment*, 29 L. & Hum. Behav. 621, 633 (2005) (a meta-analysis of mock juror decision-making studies finding that racial bias is reduced with the use of clear jury instructions); see also Jeffrey E. Pfeifer & Daniel J. Bernstein, *Expressions of Modern Racism in Judgments of Others: The Role of Task and Target Specificity on*

2. A reasonable doubt standard provides clarity, thereby reducing jurors' reliance on racial stereotypes.

Research indicates that a reasonable doubt standard helps jurors distinguish between their personal impressions and the legal question before them. One study showed that a reasonable doubt instruction is a powerful clarifying tool for reducing a jury's likelihood to render biased verdicts. Jeffrey E. Pfeifer & James R. P. Ogloff, *Ambiguity and Guilt Determinations: A Modern Racism Perspective*, 21 J. Applied Soc. Psych. 1713, 1720-21 (1991). White subjects read the transcript of a rape trial, varying the race of the defendant. *Id.* at 1717-18. When the subjects were given no instructions, they rated Black defendants more guilty than they did White defendants. *Id.* at 1720. However, when given jury instructions that included a reasonable doubt standard, this differential in outcomes disappeared. *Id.* at 1720.

Reasonable doubt also provides a common framework for discussing the evidence. A meta-analysis of mock jury studies

Attributions of Guilt, 31 Soc. Behav. & Personality: An Int'l J. 749, 751 (2003) (citing Emily Campbell et al., *Gender and Presentational Style: When the Verdict of a Trial Is Unaffected by an Attorney's Personal Characteristics and Behavior, Justice Is Served*, 31 Washburn L.J. 415 (1992) (finding that mock jurors were unlikely to allow their negative impressions of female litigators to impact their eventual verdicts under a clearly-defined legal standard); Joti Samra-Grewal et al., *Recommendations for Conditional Release Suitability: Cognitive Biases and Consistency in Case Management Officers' Decision-Making*, 42 Canadian J. Criminology 421 (2000) (finding that case management officers in a mock study were less likely to make parole decisions in a racially discriminatory fashion when given clear guidelines for decision-making).

found that a reasonable doubt standard improved jurors' ability to conceptualize a common standard (true beyond a reasonable doubt) against which to measure their interpretations of the evidence's value. Robert J. MacCoun & Norbert L. Kerr, *Asymmetric Influence in Mock Jury Deliberation: Jurors' Bias for Leniency*, 54 J. Personality & Soc. Psych. 21, 30-31 (1988). Notably, a preponderance of the evidence standard failed to achieve these results. *Id.* at 30. The researchers concluded that advocates of acquittal were empowered to explain their reservations within the reasonable doubt framework, which provided "a simple, face-saving means of changing sides for early conviction advocates; under it, they can both maintain that they believe in the defendant's guilt and grant that they harbor some doubts that require them to vote for acquittal." *Id.* The reasonable doubt standard uniquely offers a straightforward way to reconcile conflicting impulses or ambiguities in the evidence while arriving at a verdict that can be commonly accepted as correct.¹¹²

¹¹² See Sarah Stawiski et al., *The Roles of Shared Stereotypes and Shared Processing Goals on Mock Jury Decision Making*, 34 Basic & Applied Soc. Psych. 88, 94-96 (2012). In this study examining the influence of anti-gay bias, researchers found that the reasonable doubt standard provides a clear explication of a shared task in a way that the preponderance standard does not. Further, groups deliberating under a reasonable doubt standard were less likely to convict the defendant than were their counterparts under a preponderance of evidence standard, potentially offsetting the effects of jurors' stereotypic bias. *Id.* at 94.

Social science research supports the conclusion that the influence of racial bias can, at least, be reduced by requiring that the jury unanimously determine beyond a reasonable doubt factually disputed aggravating evidence and the ultimate penalty verdict.

CONCLUSION

For the foregoing reasons, this Court should hold that Penal Code section 1042 and article I, section 16 of the California Constitution require that the jury unanimously determine beyond a reasonable doubt factually disputed aggravating evidence and the ultimate penalty verdict. The full protections of the jury right in capital sentencing are imperative to removing the intolerable influence of racial bias.

DATED: October 26, 2020

Respectfully submitted

/s/ Elisabeth Semel
ELISABETH SEMEL
Attorney for *Amicus Curiae*
GOVERNOR GAVIN NEWSOM

ATTACHMENT A



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October 23, 2020

Professor Elisabeth Semel
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Re: Request for Los Angeles County Data

Dear Professor Semel:

I write in response to your request for data regarding: (1) the race of all defendants sentenced to death from Los Angeles County; (2) the race of defendants sentenced to death from Los Angeles County who are currently under a sentence of death; and (3) the data requested in items 1 and 2 but narrowed to defendants who were under the age of 25 at the time of the capital offense. I understand that you are particularly interested in the number or percentage of Black defendants in those groups, as well as how the data compares to statewide data. Pursuant to its legislative mandate (Cal. Gov't Code section 68661), the Habeas Corpus Resource Center (HCRC) collects and analyzes information about people who have been sentenced to death in California. With the exception of the U.S. Census data, the information provided in this letter about those who have been sentenced to death in California is based on data HCRC gathered pursuant to its legislative mandate and is current as of October 1, 2020.

Attached you will find one spreadsheet with multiple sheets. The first sheet lists the race or ethnicity and age, where known, of every person who has been sentenced to death as a result of charges stemming from Los Angeles County since the resumption of the death penalty in California in 1977. This list can be filtered to limit it to those currently under a sentence of death.¹ The second sheet lists the race or ethnicity of everyone who has been sentenced to death

¹ The difference between the historical information and the current death row population is that the historical information includes people who have obtained reversals, as well as those who have died of natural causes, complications due to COVID-19, or execution while on death row. Since 1977, the state has executed 2 people with death sentences stemming from Los Angeles County, William Bonin (executed in 1996) and Stanley Williams (executed in 2005). Mr. Bonin also had a death sentence from Orange County. Mr. Bonin was white, and Mr. Williams was Black.

as a result of charges stemming from counties *other than* Los Angeles since the resumption of the death penalty in California in 1977. This list can also be filtered to limit it to those currently under a sentence of death and on death row. Because the spreadsheet contains large amounts of data, and because your request asked some specific questions, I note the following information based on the data contained in the spreadsheet.²

Historic death judgments:

- Los Angeles County has sent 305 people to death row since the resumption of the death penalty in California in 1977. Of those people, 52 were White; 133 were Black; 3 were Asian; 82 were Latinx; and 14 were “Other.”³ That is, 44% of people Los Angeles County has sent to death row are Black, and 17% are white.
- By comparison, counties other than Los Angeles have imposed 708 death judgments since 1977.⁴ The demographics of California’s death row with Los Angeles County removed reflect a very different demographic breakdown than Los Angeles alone: 27% Black and 42% white.
- Historically, Los Angeles County has sentenced to death 135 people who were under the age of 25 at the time of the offense.⁵ Of those, 11 people (8%) were white and 64 people (47%) were Black,.

Current death row population:

- There are currently 215 people on California’s death row who were sentenced to death due to charges arising out of Los Angeles County. Of those 215,⁶ 47% (101 people) are Black. By comparison, the rest of death row is 29% Black (142 out of 485 death judgments).
- More broadly, 85% of Los Angeles County’s death row are people of color and just 15% are white. Comparatively, the rest of death row⁷ is 59% people of color and 41% white.
- California’s current death row population has 104 people who have death judgments out of Los Angeles County and were sentenced to death for offenses committed when they

² Some people have death judgments from more than one county. They are counted twice in such instances because the sentences relate to different sets of charges. The individuals are highlighted in the spreadsheet in blue.

³ In addition, for 21 individuals, race/ethnicity information is unknown.

⁴ Race/ethnicity information is unknown for 44 people in this group.

⁵ For this group, race/ethnicity information is unknown for 9 people. Age is unknown for an additional 7 people.

⁶ HCRC has race/ethnicity data for all 215 people on death row due to death judgments arising out of Los Angeles County.

⁷ Race/ethnicity is unknown for 6 people in this group.

were under the age of 25.⁸ Of that group, 51 people are Black (49%), 11 people are white (11%), and 89% of the group are people of color.

Census Data:

- According to the U.S. Census, Los Angeles County was 8.7% Black in 2010.⁹ It was 9.78% Black in 2000.¹⁰ The most current Census data we could locate estimate that 9.0% of the Los Angeles County's population is Black.¹¹

Please let us know if you have any questions about this information.

Sincerely,



Nisha K. Shah
Deputy Director

⁸ HCRC has race/ethnicity and age data for all members of the group.

⁹ United States Census Bureau, *California: 2010: Summary Population and Housing Characteristics*, at 124 (Dec. 2012), available at <https://www.census.gov/library/publications/2012/dec/cph-1.html>

¹⁰ United States Census Bureau, *California: 2000: Summary Population and Housing Characteristics*, at 80 (Nov. 2002), <https://www.census.gov/prod/cen2000/phc-1-6.pdf>

¹¹ United States Census Bureau, *Quick Facts: Los Angeles County, California*, <https://www.census.gov/quickfacts/losangelescountycalifornia>.

Individuals in yellow cells have received relief and been resentenced to death one or more times but appear only once because the sentences relate to the same set of charges

Individuals in blue cells have death judgments in two counties and appear in the lists twice because the sentences relate to different sets of charges

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Abilez, Frank Manuel	7/11/58	CAP	3/15/96	CAP	37.68	CAP	12/4/97	Los Angeles	Los Angeles	"Hispanic" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	No
Adams, Marcus	8/1/70	CAP	9/7/94	CAP	24.00	CDCR	7/30/03	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes
Aguirre, Isauro	6/13/80	CAP	5/22/13	HCRC	33.00	CDCR	6/7/18	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report" "Other: CAP"	L	Yes
Alexander, Andre Stephen	2/11/52	CAP	6/4/80	CAP	28.00	CDCR	4/23/96	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes
Allen, Michael Damone	9/2/72	CAP	8/5/91	CAP	19.00	CDCR	12/12/97	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Allison, Watson	11/5/58	CAP	11/11/82	CAP	24.02	CAP	10/2/84	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Amezcuca, Oswaldo	4/13/75	CAP	6/24/00	CAP	25.20	CAP	4/20/05	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Andrews, Jesse James	7/2/50	CAP	12/9/79	CAP	29.00	CDCR	6/8/84	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Arcega, Vincent M., Jr.	Unknown	CAP	6/2/78	CAP	Unknown	CAP	3/31/80	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Argueta, Carlos Marvin	5/5/85	CAP	2/14/04	CAP	19.00	CDCR	2/16/07	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Arisman, David Wayne	6/13/48	CAP	4/25/97	CAP	48.87	CAP	1/15/99	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Armstrong, Craigen Lewis	6/2/81	CAP	9/30/01	CAP	20.00	CDCR	1/5/05	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Armstrong, Jamelle Edward	3/29/80	CAP	12/29/98	CAP	18.00	CDCR	7/16/04	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Avena, Carlos Jaime	12/2/60	CAP	9/12/80	CAP	20.00	CDCR	2/12/82	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Baker, Paul Wesley	4/9/61	CAP	4/18/04	CAP	43.00	CDCR	1/16/09	Los Angeles	Los Angeles	"White" source: "3) Probation report"	W	Yes
Banks, Kelvyn Rondell	4/2/73	CAP	7/1/96	CAP	23.00	CDCR	7/8/99	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Bankston, Anthony George	12/22/64	CAP	5/10/91	CAP	27.00	CDCR	1/20/95	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Barnwell, Lamar	4/23/66	CAP	12/5/92	CAP	26.00	CDCR	8/9/96	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Barrera, Marco Esquivel	3/28/63	CAP	3/1/98	CAP	34.00	CDCR	12/13/01	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Becerra, Frank Kalil	3/22/71	CAP	12/26/94	CAP	23.00	CDCR	10/31/97	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Becerrada, Ruben	2/5/64	CAP	3/4/00	CAP	37.00	CDCR	2/11/09	Los Angeles	Los Angeles	"Hispanic" source: "3) Probation report"	L	Yes
Bell, Cimarron Bernard	4/7/74	CAP	1/27/04	HCRC	29.00	CDCR	8/9/11	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Beltran, Julian Arturo	9/18/74	CAP	1/23/02	CAP	27.00	CDCR	10/3/07	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Bernoudy, Kevin	3/23/79	CAP	5/11/06	CAP	27.00	CDCR	3/4/11	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Bittaker, Lawrence Sigmond	9/27/40	CAP	10/31/79	CAP	39.00	CDCR	3/24/81	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Blair, James Nelson	9/27/39	CAP	7/26/86	CAP	45.00	CDCR	8/9/89	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Bloom, Robert Maurice	10/28/63	CAP	4/22/82	CAP	19.00	CDCR	7/23/84	Los Angeles	Los Angeles	"White" source: "1) Inmate's birth certificate"	W	Yes
Bonin, William George	1/8/47	CAP	6/2/80	CAP	33.40	CAP	3/12/82	Los Angeles	Los Angeles	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Boyd, Juan Anthony	Unknown	CAP	11/10/79	CAP	Unknown	CAP	10/22/80	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Bradford, Bill	5/18/46	CAP	7/12/84	CAP	38.15	CAP	5/11/88	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Bradford, Mark Alan	3/12/63	CAP	4/18/88	CAP	20.00	CDCR	7/3/90	Los Angeles	Los Angeles	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Brady, Roger Hoan	10/31/65	CAP	12/27/93	CAP	28.00	CDCR	3/16/99	Los Angeles	Los Angeles	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Brim, Ronald Earl	5/10/65	CAP	9/23/08	CAP	43.00	CDCR	10/3/13	Los Angeles	Los Angeles	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Brooks, Donald Lewis	7/21/65	CAP	3/24/99	CAP	34.00	CDCR	7/16/01	Los Angeles	Los Angeles	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Brown, Latece Megale	10/25/70	CAP	10/24/03	CAP	38.00	CDCR	6/21/12	Los Angeles	Los Angeles	"Black or African American" source: " 4) Probation report"	B	Yes
Brown, Paul Madison	12/30/66	CAP	5/30/87	CAP	20.42	CAP	11/16/90	Los Angeles	Los Angeles	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)"	B	No
Bryant, Stanley	10/21/57	CAP	8/28/88	CAP	31.00	CDCR	10/19/95	Los Angeles	Los Angeles	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Burton, Andre	3/14/63	CAP	2/25/83	CAP	20.00	CDCR	6/4/85	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Butler, Raymond Oscar	6/17/75	CAP	3/25/94	CAP	19.00	CDCR	7/29/96	Los Angeles	Los Angeles	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)"	L	Yes
Caballero, Robert Louis	8/6/77	CAP	9/29/09	CAP	32.00	CDCR	2/19/15	Los Angeles	Los Angeles	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report" "Other: LA County Sheiff Department Inmate Information Center"	L	Yes
Cain, Anthony Deondrea	4/17/75	CAP	2/10/04	CAP	29.00	CDCR	1/15/10	Los Angeles	Los Angeles	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)"	B	Yes
Canales, Osman	7/22/81	CAP	9/26/07	CAP	26.00	CDCR	1/4/13	Los Angeles	Los Angeles	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Capistrano, John Leo	4/30/70	CAP	12/9/95	CAP	25.61	CAP	1/6/98	Los Angeles	Los Angeles	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Carasi, Paul Joe	4/20/65	CAP	5/14/95	CAP	30.00	CDCR	5/26/98	Los Angeles	Los Angeles	"Other" source: " 4) CDCR materials (Condemned inmate list)"	O	Yes

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Carey, Dewayne Michael	3/20/61	CAP	4/19/95	CAP	34.00	CDCR	12/16/96	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	B	No
Carpenter, David Joseph	5/6/30	CAP	5/2/81	CAP	51.00	CDCR	11/20/84	Santa Cruz	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Carrasco, Robert	2/20/57	CAP	12/16/94	CAP	37.00	CDCR	2/5/99	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Carter, Dean Phillip	8/30/55	CAP	4/10/84	CAP	28.00	CDCR	1/30/90	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Carter, Tracey Lavell	8/4/68	CAP	4/9/87	CAP	19.00	CDCR	4/20/90	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Champion, Steve Allen	8/26/62	CAP	12/12/80	CAP	18.00	CDCR	12/10/82	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Chavez, Juan Jose	9/9/85	CAP	6/6/04	CAP	19.00	CDCR	3/27/08	Los Angeles	Los Angeles	"Hispanic" source: "3) Probation report"	L	Yes
Cheatham, Steven Dewayne	4/23/77	CAP	12/20/98	CAP	24.00	CDCR	4/24/09	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Chhoun, Run Peter	12/1/72	CAP	7/27/95	CAP	22.66	CAP	3/12/02	Los Angeles	Los Angeles	"Asian" source: "3) Probation report"	A	Yes
Chism, Calvin Dion	8/24/77	CAP	6/12/97	CAP	20.00	CDCR	10/24/01	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Cisneros, Leonardo Alberto	1/29/84	CAP	8/4/04	CAP	21.00	CDCR	9/8/14	Unknown	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Clark, Douglas Daniel	3/10/48	CAP	5/31/80	CAP	32.00	CDCR	3/16/83	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Clark, William John	5/6/44	CAP	1/6/82	CAP	37.67	CAP	2/1/85	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Cleveland, Dellano Leroy	Unknown	CAP	10/15/90	CAP	27.00	CDCR	12/19/91	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Cole, Stephen	1/19/57	CAP	8/14/88	CAP	38.00	CDCR	7/16/92	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Collins, Scott Forrest	6/26/70	CAP	1/23/92	CAP	21.00	CDCR	12/19/96	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Comtois, Roland Norman	10/1/29	HCRC	9/19/87	CAP	57.97	CAP, HCRC	7/31/90	Los Angeles	Los Angeles	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	W	No
Cox, Tiequon Aundray	12/1/65	CAP	8/31/84	CAP	19.00	CDCR	4/30/86	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Craine, Louis	1/6/57	HCRC	5/29/87	CAP	30.40	CAP, HCRC	6/27/89	Los Angeles	Los Angeles	"Black or African American" source: "2) Inmate's death certificate"	B	No
Crandell, Kenneth	1/15/34	CAP	7/6/80	CAP	46.48	CAP	2/2/82	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Cudjo, Armenia Levi, Jr.	11/13/57	CAP	3/21/86	CAP	29.00	CDCR	5/27/88	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Cummings, Raynard Paul	5/12/57	CAP	6/2/83	CAP	26.00	CDCR	9/20/85	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Cunningham, Albert	10/21/47	CAP	12/2/85	CAP	21.00	CDCR	6/16/89	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Davis, Stanley Bernard	3/19/62	CAP	10/1/85	CAP	23.00	CDCR	11/14/89	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Debose, Donald Ray	3/3/77	CAP	12/17/97	CAP	20.00	CDCR	7/21/99	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Dennis, Calvin Jermaine	10/18/79	CAP	10/2/06	CAP	27.00	CDCR	1/30/09	Los Angeles	Los Angeles	"Black or African American" source: "3) Probation report"	B	Yes
Dent, Anthony	4/22/74	CAP	1/27/02	CAP	28.00	CDCR	9/10/09	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Dent, Omar, III	11/28/62	CAP	8/19/88	CAP	25.73	CAP	11/1/91	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	No
Dixon, James Winslow	9/22/72	CAP	8/17/01	CAP	24.00	CDCR	5/2/08	Los Angeles	Los Angeles	"Black or African American" source: "3) Probation report"	B	Yes
Donaldson, Jasari Latiful	6/26/69	CAP	8/4/98	CAP	29.00	CDCR	10/5/04	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Duenas, Enrique Parra	6/23/74	CAP	10/30/97	CAP	23.35	CAP	1/22/99	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Duncan, Henry Earl	10/15/64	CAP	11/13/84	CAP	20.08	CAP	5/5/86	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Duong, Anh The	1/15/75	CAP	5/6/99	CAP	24.31	CAP	3/7/03	Los Angeles	Los Angeles	"Asian" source: "4) Probation report"	A	Yes
Earp, Ricky Lee	1/14/62	CAP	8/15/88	CAP	27.00	CDCR	2/21/92	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Elliott, Marchand	Unknown	CAP	3/15/89	CAP	20.00	CDCR	6/3/92	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Espinoza, Johnny	11/16/80	CAP	1/9/00	CAP	21.00	CDCR	1/24/06	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Espinoza, Pedro	2/18/89	CAP	3/2/08	CAP	19.00	CDCR	11/2/12	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report"	L	Yes
Fajardo, Jonathan	4/7/88	CAP	12/15/06	CAP	18.00	CDCR	4/22/11	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report"	L	No
Farnam, Jack Gus	10/11/64	CAP	11/15/82	CAP	18.00	CDCR	6/15/89	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Fayed, James Michael	2/5/63	CAP	7/28/08	CAP	46.00	CDCR	11/17/11	Los Angeles	Los Angeles	"White" source: "4) Probation report"	W	Yes
Fields, Stevie Lamar	5/6/56	CAP	9/28/78	CAP	22.00	CDCR	8/21/79	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Flores, Joseph	9/28/70	CAP	6/24/00	CAP	30.00	CDCR	4/20/05	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Flores, Ralph	9/23/81	CAP	12/26/04	CAP	23.00	CDCR	9/8/08	Los Angeles	Los Angeles	"Hispanic" source: "3) Probation report"	L	Yes
Franklin, Lonnie David, Jr.	8/30/52	CAP	8/10/85	CAP	33.00	CDCR	8/10/16	Los Angeles	Los Angeles	"Black or African American" source: "Other: Online news reports"	B	No
Friedman, Kenneth	8/25/39	CAP	10/26/94	CAP	55.17	CAP	12/2/05	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Frierson, Lavell	6/13/57	CAP	1/3/78	CAP	20.56	CAP	8/14/78	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Fudge, Keith Tyrone	5/4/66	CAP	10/12/84	CAP	18.00	CDCR	12/11/87	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes

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Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Fuentes, Jose Leon	9/23/42	CAP	12/1/80	CAP	38.19	CAP	11/30/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Fuiava, Freddie	Unknown	CAP	5/12/95	CAP	25.00	CDCR	8/19/96	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Fuller, Ronald Edward	7/16/53	CAP	7/25/82	CAP	29.03	CAP	2/3/83	Los Angeles	Los Angeles	"White" source: "2) Inmate's death certificate"	W	No
Garcia, Randy Eugene	9/24/70	HCRC	5/8/93	CAP	23.00	CDCR	3/23/95	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Gay, Kenneth Earl	11/23/57	CAP	6/2/83	CAP	26.00	CDCR	9/20/85	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	No
Gomez, Ruben Perez	3/8/70	CAP	7/1/97	CAP	27.00	CDCR	3/31/00	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Gonzales, Jesse Edward	5/29/48	CAP	5/29/79	CAP	31.00	CDCR	7/28/81	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Gonzales, John Anthony	5/24/76	CAP	1/27/96	CAP	19.00	CDCR	12/18/98	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Gonzalez, Frank Christopher	5/17/80	CAP	3/28/06	CAP	26.00	CDCR	5/13/08	Los Angeles	Los Angeles	"Hispanic" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	L	Yes
Gonzalez, Jose	10/26/76	CAP	6/17/96	CAP	19.64	CAP	8/24/98	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report"	L	No
Gonzalez, Martin G.	8/13/48	CAP	1/16/82	CAP	33.43	CAP	7/8/83	Los Angeles	Los Angeles	"Hispanic" source: "2) Inmate's death certificate"	L	No
Govin, Pravin	6/24/69	CAP	5/4/02	CAP	36.00	CDCR	9/8/05	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Govin, Virendra	4/21/67	CAP	5/4/02	CAP	35.00	CDCR	12/21/04	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	No
Gray, Mario Lewis	6/9/57	CAP	4/15/87	CAP	29.85	CAP	3/14/90	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Guerra, Jose Francisco	2/14/59	CAP	10/25/90	CAP	31.00	CDCR	11/22/93	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report"	L	Yes
Gutierrez, Alfred Anthony	6/8/70	CAP	10/11/96	CAP	26.00	CDCR	8/10/98	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Hale, Brian Darle	5/13/53	CAP	10/8/80	CAP	27.40	CAP	8/24/81	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No

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Haley, Kevin Bernard	10/21/63	CAP	9/27/84	CAP	21.00	CDCR	10/3/88	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Halvorsen, Arthur Hans	2/10/42	CAP	3/31/85	CAP	44.00	CDCR	11/18/88	Los Angeles	Los Angeles	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Hardy, James Edward	5/28/54	CAP	5/21/81	CAP	26.98	CAP	2/1/84	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Hardy, Warren Justin	12/13/76	CAP	12/29/98	CAP	22.00	CDCR	1/23/03	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Harris, Kai	6/5/77	CAP	4/6/04	CAP	32.00	CDCR	11/20/09	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Harris, Lanell Craig	8/10/66	CAP	8/7/91	CAP	24.99	CAP	1/12/94	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Harris, Lee Edward	Unknown	CAP	12/1/77	CAP	Unknown	CAP	8/27/80	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Harris, Maurice Lydell	8/7/43	CAP	8/9/94	CAP	29.00	CDCR	12/20/96	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Harris, Von Maurice	12/14/59	CAP	12/7/82	CAP	22.98	CAP	6/19/84	Los Angeles	Los Angeles	"Unknown" source: "3) CDCR materials (Condemned inmate list)"	Unknown	No
Haskett, Randy	8/7/56	CAP	10/23/78	CAP	22.21	CAP	8/28/79	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Hawthorne, Anderson, Jr.	9/2/60	CAP	12/18/82	CAP	22.00	CDCR	2/18/86	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Hawthorne, Carlos Anthony, II	8/8/76	CAP	8/25/96	CAP	20.00	CDCR	9/5/97	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Hayes, John Westley	Unknown	CAP	7/14/80	CAP	Unknown	CAP	8/20/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No

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Heard, James Matthew	5/26/52	CAP	12/19/90	CAP	38.00	CDCR	9/28/93	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Hendricks, Edgar Morris	2/11/53	CAP	7/29/80	CAP	27.47	CAP	11/8/83	Los Angeles	Los Angeles	"Unknown" source: " 4) CDCR materials (Condemned inmate list)"	Unknown	No
Hernandez, Francis Gerard	3/10/62	CAP	2/2/81	CAP	18.00	CDCR	7/12/83	Los Angeles	Los Angeles	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Hill, Ivan J.	3/30/61	CAP	1/12/94	CAP	32.00	CDCR	3/21/07	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Hill, Shawn	8/14/59	CAP	8/25/86	CAP	27.03	CAP	9/22/88	Los Angeles	Los Angeles	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)"	B	No
Hinton, Eric Lamont	8/9/69	CAP	5/24/88	CAP	19.00	CDCR	12/10/93	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Holmes, Karl Darnell	10/3/74	CAP	10/31/93	CAP	19.00	CDCR	1/21/97	Los Angeles	Los Angeles	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Homick, Steven	7/12/40	CAP	9/25/85	CAP	45.20	CAP	1/13/95	Los Angeles	Los Angeles	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	No
Horton, James Frank, II	3/28/53	CAP	10/11/82	CAP	29.54	CAP	10/7/85	Los Angeles	Los Angeles	"Black or African American" source: "Other: Los Angeles DDES Portal"	B	No
Howard, Alphonso	Unknown	CAP	4/2/88	CAP	22.00	CDCR	10/20/92	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Hughes, Michael	11/1/56	CAP	1/21/86	CAP	30.00	CDCR	6/22/12	Los Angeles	Los Angeles	"Black or African American" source: " 4) Probation report"	B	Yes
Ingram, Reyon Twain	4/11/83	CAP	10/2/06	CAP	23.00	CDCR	3/6/09	Los Angeles	Los Angeles	"Black or African American" source: " 3) Probation report"	B	Yes
Jackson, Earl Lloyd	10/30/57	CAP	9/7/77	CAP	20.00	CDCR	3/19/79	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Jackson, Michael Anthony	3/27/54	CAP	8/31/83	CAP	29.00	CDCR	5/21/84	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Jenkins, Daniel Steven	8/3/55	CAP	10/31/85	CAP	30.00	CDCR	10/6/88	Los Angeles	Los Angeles	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes

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Johnson, Cedric Jerome	1/26/66	CAP	9/26/96	CAP	31.00	CDCR	12/18/98	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Johnson, Cleamon	10/15/67	CAP	8/5/91	CAP	24.00	CDCR	12/12/97	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Johnson, Mila	8/2/77	CAP	8/9/06	CAP	29.00	CDCR	9/3/10	Los Angeles	Los Angeles	"Other" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	O	Yes
Jones, Earl Preston	12/31/34	CAP	6/5/82	CAP	47.43	CAP	2/22/85	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	No
Jones, Ernest Dewayne	6/27/64	CAP	8/25/92	CAP	28.00	CDCR	4/7/95	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Jones, Kiongozi	2/24/69	CAP	12/6/96	CAP	27.00	CDCR	11/17/98	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Jones, Ronald Anthony	Unknown	CAP	10/18/88	CAP	19.00	CDCR	6/4/91	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Jones, Steven Anthony	9/23/67	CAP	11/12/04	CAP	37.00	CDCR	8/14/09	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Joseph, Mariney	Unknown	CAP	4/4/79	CAP	Unknown	CAP	7/8/80	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Kaurish, Jay Charles	7/2/47	CAP	3/7/82	CAP	34.68	CAP	7/27/84	Los Angeles	Los Angeles	"White" source: "2) Inmate's death certificate" "Other: CAP"	W	No
Kelly, Douglas Oliver	4/13/58	CAP	9/7/93	CAP	35.00	CDCR	11/8/95	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Kimble, Eric B.	12/14/59	CAP	8/12/78	CAP	19.00	CDCR	4/1/81	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
King, Corey Lynn	7/27/90	CAP	9/9/08	CAP	18.00	CDCR	2/19/15	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Kipp, Martin James	1/30/58	CAP	9/16/83	CAP	26.00	CDCR	2/24/89	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Kirkpatrick, William, Jr.	6/12/60	CAP	9/17/83	CAP	23.00	CDCR	8/14/84	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

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Lancaster, Andrew	6/12/72	CAP	4/23/96	CAP	23.00	CDCR	9/16/98	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Leon, Richard	7/14/66	CAP	1/14/93	CAP	26.50	CAP	10/1/96	Los Angeles	Los Angeles	"White" source: "1) Inmate's birth certificate"	W	No
Lewis, Albert, Jr.	3/3/56	CAP	7/21/89	CAP	33.00	CDCR	5/21/93	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Lewis, John Irvin	6/30/70	CAP	8/27/91	CAP	21.00	CDCR	3/3/93	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Lewis, Robert, Jr.	5/31/52	CAP	10/27/83	CAP	31.00	CDCR	11/1/84	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Lewis, Travis Jeremy	12/27/86	CAP	4/3/08	CAP	22.00	CDCR	8/5/10	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Livaditis, Steven	3/30/64	CAP	6/23/86	CAP	22.00	CDCR	7/8/87	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Livingston, David James	3/22/73	CAP	1/3/99	CAP	25.78	CAP	7/20/00	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Lomax, Darrell Lee	6/22/70	CAP	8/24/94	CAP	24.00	CDCR	10/16/96	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Loot, Kendrick	6/12/71	CAP	11/15/95	CAP	24.00	CDCR	2/23/00	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Lopez, Juan Manuel	2/14/72	CAP	4/12/96	CAP	24.00	CDCR	9/18/98	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Louis, Vincent	3/15/56	CAP	5/12/80	CAP	24.16	CAP	8/28/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Loy, Eloy	7/27/51	CAP	5/9/96	CAP	45.00	CDCR	1/14/99	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Lucas, Larry Douglas	11/20/49	CAP	10/20/86	CAP	36.92	CAP	11/4/87	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Lucky, Darnell	3/21/54	CAP	1/20/81	CAP	28.00	CDCR	4/7/82	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Maciel, Luis Pelon	6/5/69	CAP	4/22/95	CAP	26.00	CDCR	5/8/98	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Madison, Ricky Rene	2/3/60	CAP	12/5/06	CAP	47.00	CDCR	7/17/09	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Magallon, Miguel Angel	6/29/83	CAP	8/10/04	CAP	21.00	CDCR	10/15/09	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	No
Manriquez, Abelino	5/4/56	CAP	1/22/89	CAP	32.00	CDCR	11/16/93	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Marentes, Desi Angel	6/21/78	CAP	4/5/06	CAP	28.00	CDCR	1/24/13	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Marks, John	3/25/57	CAP	11/25/80	CAP	23.67	CAP	3/31/82	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Marquez, Gonzalo Marquez	1/1/61	CAP	3/15/81	CAP	20.21	CAP	9/24/84	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Marshall, Sammy	2/20/46	CAP	4/13/86	CAP	40.15	CAP	10/27/88	Los Angeles	Los Angeles	"Black or African American" source: "2) Inmate's death certificate"	B	No
Martin, Valerie Dee	9/13/67	CAP	2/28/03	CAP	36.00	CDCR	3/26/10	Los Angeles	Los Angeles	"White" source: "4) Probation report"	W	Yes
Martinez, Miguel Angel	7/13/70	CAP	7/1/94	CAP	23.97	CAP	12/11/98	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Martinez, Santiago	9/8/81	CAP	3/30/03	CAP	22.00	CDCR	11/24/09	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Mattson, Michael Dee	7/23/53	CAP	9/6/78	CAP	25.12	CAP	4/10/80	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
McClain, Herbert Charles	9/6/68	CAP	10/31/93	CAP	25.15	CAP	1/21/97	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
McDaniel, Donte Lamont	6/8/79	CAP	4/6/04	CAP	24.83	CAP	3/20/09	Los Angeles	Los Angeles	"Black or African American" source: "3) Probation report"	B	Yes
McDermott, Maureen	Unknown	CAP	4/28/85	CAP	38.00	CDCR	6/8/90	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
McDonald, Eddie Bobby	Unknown	CAP	10/20/79	CAP	Unknown	CAP	12/11/80	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No

LA Death Judgments (incl age)

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McDowell, Charles Edward	9/27/53	CAP	5/20/82	CAP	29.00	CDCR	10/23/84	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
McGhee, Timothy J.	4/27/73	CAP	10/24/97	CAP	28.00	CDCR	1/9/09	Los Angeles	Los Angeles	"Hispanic" source: "3) Probation report"	L	Yes
Mejorado, Jose Sergio	1/9/79	CAP	4/12/05	CAP	27.00	CDCR	9/1/10	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Memro, Harold Ray	5/10/45	CAP	10/22/78	CAP	33.00	CDCR	1/22/80	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Mendoza, Angel	4/22/74	CAP	10/27/07	CAP	34.00	CDCR	1/17/14	Unknown	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	Yes
Mendoza, Manuel	6/14/64	CAP	2/7/86	CAP	21.00	CDCR	1/6/89	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Mendoza, Ronald Bruce	12/3/73	CAP	5/11/96	CAP	23.00	CDCR	10/24/97	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Mercado, Joseph	11/23/83	CAP	5/6/10	CAP	27.00	CDCR	1/29/16	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report"	L	Yes
Meza, Heraclio	4/4/89	CAP	7/16/09	CAP	20.00	CDCR	2/9/17	Los Angeles	Los Angeles	"Hispanic" source: "4) Probation report"	L	Yes
Miller, Donald	6/6/54	CAP	2/14/81	CAP	26.69	CAP	11/10/83	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	No
Millsap, Bruce	3/21/67	CAP	11/15/95	CAP	29.00	CDCR	2/23/00	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Miranda, Adam	4/15/60	CAP	9/27/80	CAP	20.45	CAP	9/17/82	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Moon, Richard Russell	8/31/67	CAP	6/15/90	CAP	23.00	CDCR	5/9/91	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Moore, Charles Edward	3/18/55	CAP	12/1/77	CAP	22.00	CDCR	5/16/84	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Moore, Ryan T.	8/3/73	CAP	6/30/06	CAP	33.00	CDCR	3/23/12	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Mora, Joseph Adam	6/3/75	CAP	8/24/97	CAP	22.00	CDCR	5/27/99	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Morales, Alfonso Ignacio	12/1/78	CAP	7/12/05	CAP	24.00	CDCR	8/23/05	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes

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Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Morris, Oscar Lee	10/31/45	CAP	9/3/78	CAP	32.84	CAP	11/21/83	Los Angeles	Los Angeles	"Black or African American" source: "Other: Los Angeles DDES Portal"	B	No
Morrison, Jesse	11/22/67	CAP	5/11/89	CAP	22.00	CDCR	10/30/91	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "Other: FBI materials (included in exhibits to Return to OSC)"	B	Yes
Mosley, Barry Wendell	10/1/59	CAP	4/17/99	CAP	41.00	CDCR	10/30/08	Los Angeles	Los Angeles	"Black or African American" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	B	Yes
Myers, Venson Lane	3/29/60	CAP	1/24/79	CAP	18.82	CAP	4/21/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Nakahara, Evan Teek	Unknown	CAP	7/11/89	CAP	20.00	CDCR	11/6/90	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Navarette, Martin Anthony	6/19/65	CAP	12/6/89	CAP	24.00	CDCR	8/14/91	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Nelson, Bernard Albert	6/22/69	CAP	4/5/95	CAP	26.00	CDCR	1/10/00	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Nelson, Sergio Dujuan	9/9/74	CAP	10/2/93	CAP	19.00	CDCR	9/7/95	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Newborn, Lorenzo	4/21/70	CAP	10/31/93	CAP	23.00	CDCR	1/21/97	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Nieves, Sandi Dawn	3/9/64	CAP	7/1/98	CAP	34.00	CDCR	10/6/00	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Nunez, Daniel	3/18/76	CAP	10/26/98	CAP	22.00	CDCR	9/14/00	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Ochoa, Lester Robert	3/26/61	CAP	6/18/87	CAP	26.00	CDCR	3/20/89	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Ochoa, Sergio	4/9/68	CAP	1/3/90	CAP	21.00	CDCR	12/10/92	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Oliver, Anthony Cedric	11/4/61	CAP	7/21/89	CAP	28.00	CDCR	5/21/93	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

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Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Orozco, Jose Luis	12/16/77	CAP	6/24/05	CAP	28.00	CDCR	5/3/07	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Palma, Jimmy	5/18/74	HCRC	4/22/95	HCRC	20.93	HCRC	6/11/97	Los Angeles	Los Angeles	"Hispanic" source: "2) Inmate's death certificate"	L	No
Pan, Samreth Sam	9/20/76	CAP	7/27/95	CAP	19.00	CDCR	3/12/02	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Panah, Hooman Ashkan	Unknown	CAP	11/20/93	CAP	22.00	CDCR	3/6/95	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Pasasouk, Ka	8/28/81	CAP	12/2/12	CAP	31.00	CDCR	2/5/16	Los Angeles	Los Angeles	"Asian" source: "4) Probation report" "Other: News articles; CT"	A	Yes
Pearson, Kevin Darnell	3/28/77	CAP	12/29/06	CAP	28.00	CDCR	11/19/03	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Penunuri, Richard	3/12/78	CAP	1/14/98	CAP	19.00	CDCR	1/31/01	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Perez, Christian Tomas	5/10/87	CAP	11/16/05	CAP	18.00	CDCR	4/26/13	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Perez, John Michael	6/9/66	CAP	6/27/09	CAP	43.00	CDCR	7/12/13	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Pineda, Santiago	3/20/81	CAP	4/20/04	CAP	21.00	CDCR	2/15/07	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Pinholster, Scott Lynn	1/25/58	CAP	1/9/82	CAP	22.00	CDCR	6/4/84	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Poggi, Joseph Carlos	1/10/50	CAP	12/15/80	CAP	30.93	CAP	11/12/82	Los Angeles	Los Angeles	"Hispanic" source: "2) Inmate's death certificate"	L	No
Ponce, David	9/24/80	CAP	11/2/08	HCRC	28.00	CDCR	2/15/18	Unknown	Los Angeles	"Hispanic" source: "4) Probation report"	L	Yes
Pops, Aswad	2/23/71	CAP	1/25/98	CAP	26.00	CDCR	4/7/00	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Post, John	4/19/68	CAP	9/22/96	CAP	28.43	CAP	12/17/01	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Powell, Troy Lincoln	12/22/67	CAP	2/12/00	CAP	33.00	CDCR	9/23/05	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

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Poynton, Richard James	11/4/50	CAP	1/15/99	CAP	48.20	CAP	4/9/01	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Ramirez, Richard Munoz	2/28/60	CAP	8/8/85	CAP	25.44	CAP	11/7/89	Los Angeles	Los Angeles	"Hispanic" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	L	No
Rangel, Ruben	3/12/75	CAP	8/24/97	CAP	22.00	CDCR	5/27/99	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Ratliff, James Monroe	4/14/53	CAP	11/3/80	CAP	27.55	CAP	11/5/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Reed, Ennis	10/30/72	CAP	9/24/96	CAP	24.00	CDCR	9/29/99	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Reilly, Mark Anthony	8/3/58	CAP	5/21/81	CAP	23.00	CDCR	2/1/84	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Riccardi, John Alexander	10/1/35	CAP	3/30/83	CAP	48.00	CDCR	9/20/96	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Robinson, James, Jr.	12/28/68	CAP	6/30/91	CAP	23.00	CDCR	6/17/94	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Rodriguez, Angelina	6/1/68	CAP	9/9/00	CAP	32.00	CDCR	1/12/04	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Rodriguez, Antonio	1/23/81	CAP	11/12/04	CAP	24.00	CDCR	9/2/10	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Rodriguez, Luis Jesus	11/20/83	CAP	7/28/07	CAP	24.00	CDCR	9/21/15	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Rodriguez, Nicholas Santino	2/2/78	CAP	5/11/99	CAP	21.28	CAP	7/30/01	Los Angeles	Los Angeles	"Hispanic" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)" "Other: CAP"	L	No
Rogers, Glen	7/15/62	CAP	9/28/95	CAP	33.00	CDCR	7/16/99	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Roldan, Ricardo	Unknown	CAP	6/3/90	CAP	20.00	CDCR	12/29/92	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Romero, Gerardo	5/31/75	CAP	10/9/94	CAP	19.00	CDCR	5/22/98	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes

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Ronquillo, Gabriel Alexander	7/25/72	CAP	6/20/99	CAP	26.90	CAP	3/15/12	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Ross, Craig Anthony	2/1/59	CAP	12/12/80	CAP	22.00	CDCR	12/10/82	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Rubio, Gilbert Raul	2/10/61	CAP	1/12/98	CAP	36.00	CDCR	9/20/00	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	No
Ruiz, Rudy Anthony	12/7/78	CAP	6/27/09	CAP	31.00	CDCR	7/12/13	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Sakarias, Peter	5/5/67	CAP	7/12/88	CAP	21.19	CAP	12/5/91	Los Angeles	Los Angeles	"Other" source: "3) CDCR materials (Condemned inmate list)"	O	No
Salazar, Magdaleno	1/18/74	CAP	7/7/93	CAP	20.00	CDCR	3/12/99	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Samuels, Mary Ellen	Unknown	CAP	12/8/88	CAP	42.00	CDCR	9/16/94	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Sanchez-Fuentes, Edgardo	2/3/71	HCRC	5/4/92	CAP	22.00	CDCR	3/3/95	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Sanders, Ricardo Rene	9/21/55	CAP	12/14/80	CAP	25.23	CAP	12/3/82	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Sandoval, Alfred Arthur	1/31/58	CAP	1/1/00	CAP	41.92	CAP	6/30/87	Los Angeles	Los Angeles	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	No
Sandoval, Ramon, Jr.	8/8/81	CAP	4/29/00	CAP	19.00	CDCR	5/9/03	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Satele, William Tupua	11/23/77	CAP	10/29/98	CAP	20.00	CDCR	9/14/00	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Scott, James Robert	1/28/63	CAP	4/22/86	CAP	24.00	CDCR	5/18/89	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Shorts, Donald	6/3/82	CAP	3/21/05	CAP	23.00	CDCR	11/29/10	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Shove, Theodore Churchill	8/11/52	CAP	9/17/01	CAP	59.00	CDCR	3/13/08	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)" "Other: Los Angeles County Sheriff's Department Inmate Information Center"	W	Yes

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Silva, Mauricio Rodriguez	10/25/59	CAP	5/28/84	CAP	24.59	CAP	8/11/86	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Sims, Mitchell Carlton	2/12/60	CAP	12/9/85	CAP	25.83	CAP	9/11/87	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Smallwood, Ronald Jerome	1/21/61	CAP	3/17/79	CAP	18.16	CAP	1/9/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Smith, Charles	2/6/69	CAP	3/31/06	CAP	38.00	CDCR	9/6/13	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Smith, Donald Franklin	3/8/58	CAP	8/28/88	CAP	30.00	CDCR	10/19/95	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Snow, Prentice Juan	1/5/52	CAP	11/3/80	CAP	29.00	CDCR	8/31/82	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Soliz, Michael	12/27/73	CAP	4/14/96	CAP	23.00	CDCR	12/18/98	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Stansbury, Robert Edward	3/13/43	CAP	9/28/82	CAP	39.54	CAP	7/15/85	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Staten, Deondre Arthur	Unknown	CAP	10/13/90	CAP	34.00	CDCR	1/16/92	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Stitely, Richard	6/24/48	CAP	1/19/90	CAP	41.00	CDCR	9/14/92	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Thomas, Donrell	12/24/61	CAP	5/31/86	CAP	24.44	CAP	9/10/87	Los Angeles	Los Angeles	"Black or African American" source: "2) Inmate's death certificate"	B	No
Thomas, Michael	11/9/65	CAP	11/1/12	CAP	47.00	CDCR	9/30/16	Los Angeles	Los Angeles	"Black or African American" source: "4) Probation report"	B	Yes
Thomas, Regis Deon	6/18/70	CAP	1/31/92	CAP	21.00	CDCR	8/15/95	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Thompson, Catherine	11/24/47	CAP	6/14/90	CAP	43.00	CDCR	6/16/93	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Trujeque, Tommy Adrian	1/10/53	CAP	6/2/86	CAP	33.39	CAP	11/9/99	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Tucker, Jamar	9/21/81	CAP	4/21/05	CAP	24.00	CDCR	11/29/10	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Tuilaepa, Paul Palalaua	6/10/65	CAP	10/6/86	CAP	21.00	CDCR	9/25/87	Los Angeles	Los Angeles	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Turner, Chester Dwayne	11/5/66	CAP	11/6/96	CAP	21.00	CDCR	7/10/07	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Turner, Melvin	9/29/56	CAP	7/11/79	CAP	23.00	CDCR	8/20/80	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Valdez, Alfredo Reyes	1/12/63	CAP	4/30/89	CAP	27.00	CDCR	5/22/92	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Valdez, Richard A.	10/7/73	CAP	4/22/95	CAP	22.00	CDCR	6/11/97	Los Angeles	Los Angeles	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Veasley, Chauncey Jamal	Unknown	CAP	10/12/90	CAP	27.00	CDCR	1/24/92	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Velasquez, Nick Ramon	Unknown	CAP	11/3/77	CAP	Unknown	CAP	1/31/79	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Verdugo, Nathan James	9/5/72	CAP	10/22/94	CAP	22.00	CDCR	11/19/99	Los Angeles	Los Angeles	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Virgil, Lester Wayne	12/28/64	CAP	10/24/92	CAP	28.00	CDCR	6/29/95	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Wader, Michael Joseph	10/14/44	CAP	11/15/84	CAP	40.09	CAP	1/5/88	Los Angeles	Los Angeles	"White" source: "2) Inmate's death certificate"	W	No
Waidla, Tauno	11/26/67	CAP	7/12/88	CAP	21.00	CDCR	3/8/91	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Ward, Carmen Lee	10/1/69	CAP	2/20/88	CAP	18.00	CDCR	1/25/91	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Warren, Robert Gentry	7/11/57	CAP	9/8/79	CAP	22.16	CAP	2/5/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Warren, Woodrow	9/1/55	CAP	9/8/79	CAP	24.02	CAP	2/5/81	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Watkins, Paul Sodoa	Unknown	CAP	7/17/90	CAP	22.00	CDCR	5/11/92	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Watson, Paul Gregory	3/30/66	CAP	4/2/89	CAP	23.00	CDCR	12/13/91	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Wheeler, LeRoy	3/8/69	CAP	8/28/88	CAP	19.00	CDCR	10/25/95	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Williams, Barry Glenn	4/4/62	CAP	3/25/82	CAP	20.00	CDCR	7/11/86	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Williams, Darren Charles	6/5/60	CAP	8/31/84	CAP	24.24	CAP	7/23/87	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Williams, David Earl	Unknown	CAP	3/20/89	CAP	27.00	CDCR	10/20/92	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Williams, George Brett	Unknown	CAP	1/2/90	CAP	26.00	CDCR	12/17/92	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Williams, Manling Tsang	10/1/79	CAP	8/7/07	CAP	28.00	CDCR	1/19/12	Los Angeles	Los Angeles	"Other" source: "4) Probation report"	O	Yes
Williams, Stanley	11/29/53	CAP	3/11/79	CAP	25.28	CAP	4/15/81	Los Angeles	Los Angeles	"Black or African American" source: "Other: CDCR materials (Inmates executed)"	B	No
Willis, Mose	9/17/48	CAP	4/3/81	CAP	32.54	CAP	7/26/82	Los Angeles	Los Angeles	"Black or African American" source: "2) Inmate's death certificate"	B	No
Wilson, Andre Gerald	10/26/70	CAP	7/25/95	CAP	26.00	CDCR	5/1/98	Los Angeles	Los Angeles	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Wilson, Byron Paul	4/11/77	CAP	1/25/98	CAP	20.00	CDCR	4/7/00	Los Angeles	Los Angeles	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Wilson, Robert Paul	6/16/51	CAP	9/4/84	CAP	33.00	CDCR	7/14/88	Los Angeles	Los Angeles	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Wright, Bronte Lamont	8/13/54	CAP	4/30/81	CAP	26.71	CAP	10/29/82	Los Angeles	Los Angeles	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Wright, William Lee	8/20/69	CAP	3/21/00	CAP	31.00	CDCR	6/14/02	Los Angeles	Los Angeles	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

LA Death Judgments (incl age)

Name	Date of Birth	Date of Birth Source	Date of Offense	Date of Offense Source	Age at Offense	Age at Offense Source	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Zamudio, Samuel Jimenez	7/16/64	CAP	2/11/96	CAP	32.00	CDCR	10/5/98	Los Angeles	Los Angeles	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes

LA Death Judgments (incl age)

All (whether or not currently under a sentence of death)

Race	Number	Percentage of Total
W	52	17.05%
B	133	43.61%
A	3	0.98%
L	82	26.89%
O	14	4.59%
Unknown	21	6.89%
Total	305	
Percentage of non-white capital-sentenced persons in LA County (with unknowns excluded from total):		81.69%

Currently Under a Sentence of Death

Race	Number	Percentage of Total
W	32	14.88%
B	101	46.98%
A	3	1.40%
L	67	31.16%
O	12	5.58%
Unknown	0	0.00%
Total	215	
Percentage of non-white capital-sentenced persons in LA County:		85.12%

LA Death Judgments (incl age)

Under 25 (whether or not currently under a sentence of death)

Race	Number	Percentage of Total
W	11	8.15%
B	64	47.41%
A	2	1.48%
L	43	31.85%
O	6	4.44%
Unknown	9	6.67%
Total	135	
Percentage of non-white capital-sentenced persons in LA County under 25 at time of crime (with unknowns excluded from total):		91.27%

Under 25 (currently under a sentence of death)

Race	Number	Percentage of Total
W	11	10.58%
B	51	49.04%
A	2	1.92%
L	35	33.65%
O	5	4.81%
Unknown	0	0.00%
Total	104	
Percentage of non-white capital-sentenced persons in LA County under 25 at time of crime:		89.42%

Non-Los Angeles Death Judgments

Individuals in yellow cells have received relief and been resentenced to death one or more times but appear only once because the sentences relate to the same set of charges

Individuals in blue cells have death judgments in two counties and appear in the lists twice because the sentences relate to different sets of charges

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Abbott, Joe Henry	2/16/06	San Bernardino	San Bernardino	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)"	B	No
Abel, John Clyde	9/26/97	Orange	Orange	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	No
Acremant, Robert James	10/4/02	Tulare	Tulare	"Other" source: " 3) CDCR materials (Condemned inmate list)"	O	No
Adcox, Keith Edward	7/11/83	Tuolumne	Tuolumne	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Aguayo, Joseph Moreno	12/21/06	Sacramento	Sacramento	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Aguilar, Jeffrey	10/24/13	Ventura	Ventura	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)"	L	Yes
Aguirre, Jason Alejandro	8/14/09	Orange	Orange	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Ainsworth, Steven King	1/30/80	Sacramento	Sacramento	"White" source: " 3) CDCR materials (Condemned inmate list)"	W	No
Alcala, Rodney James	6/20/80	Orange	Orange	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Aldana, Roman Gabriel	7/30/10	Riverside	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Alexander, Stuart Charles	2/15/05	Alameda	Alameda	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Alfaro, Maria del Rosio	7/14/92	Orange	Orange	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Allen, Clarence Ray	11/22/82	Fresno	Glenn	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Alvarez, Alberto	2/8/10	San Mateo	San Mateo	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	Yes
Alvarez, Francisco Jay	6/28/00	Kern	Kern	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	Yes
Alvarez, Manuel Machado	9/14/89	Sacramento	Sacramento	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	No
Anderson, Eric Steve	10/28/05	San Diego	San Diego	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Anderson, James Phillip	11/30/79	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Anderson, Stephen Wayne	7/24/81	San Bernardino	San Bernardino	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Arias, Lorenzo Inez	9/10/08	San Bernardino	San Bernardino	"Hispanic" source: "3) Probation report"	L	Yes
Arias, Pedro	2/22/90	Sacramento	Sacramento	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Armendariz, Joseph Mario	3/11/81	Sacramento	Sacramento	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Ashmus, Troy Adam	7/29/86	Sacramento	San Mateo	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Avalos, Emilio Manuel	2/22/13	Riverside	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	No
Avila, Alejandro	7/22/05	Orange	Orange	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Avila, Johnny, Jr.	3/29/95	Fresno	Fresno	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Avila, Joseph	4/29/99	Riverside	Riverside	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Ayala, Hector Juan	11/30/89	San Diego	San Diego	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Ayala, Ronaldo Medrano	2/9/89	San Diego	San Diego	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Babbitt, Manuel Pina	7/8/82	Sacramento	Sacramento	"Black or African American" source: "Other: CDCR materials (Inmates executed)"	B	No
Bacigalupo, Miguel Angel	6/12/87	Santa Clara	Santa Clara	"Other" source: " 4) CDCR materials (Condemned inmate list)"	O	No
Bacon, Robert Allen	5/20/99	Solano	Solano	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Bailey, Jerry Kenneth	5/16/90	Alameda	Alameda	"White" source: " 2) Inmate's death certificate"	W	No
Balcom, Jason Michael	2/7/14	Unknown	Orange	"Black or African American" source: " 4) Probation report"	B	Yes
Balderas, David	4/15/81	Kern	Kern	"Unknown" source: " 4) CDCR materials (Condemned inmate list)"	Unknown	No
Barbar, Michael	12/14/12	Riverside	Riverside	"Other" source: " 3) CDCR materials (Condemned inmate list)"	O	Yes
Barnett, Lee Max	11/30/88	Butte	Butte	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Barrera, Raymond Alex	12/1/17	Riverside	Riverside	"Unknown" source:	Unknown	Yes
Barrett, Joseph Anthony	4/5/04	Imperial	Imperial	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Battle, Thomas	9/4/03	San Bernardino	San Bernardino	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes
Beames, John Michael	10/11/95	Tulare	Tulare	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Bean, Anthony Cornell	7/20/81	Sacramento	Sacramento	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	No
Beardslee, Donald Jay	3/13/84	San Mateo	San Mateo	"White" source: "1) Inmate's birth certificate" "Other: CAP"	W	No
Beck, James David	10/23/92	Stanislaus	Alameda	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Beeler, Rodney Gene	5/5/89	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Bell, Michael Leon	6/24/99	Stanislaus	Stanislaus	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Bell, Ronald Lee	3/2/79	Contra Costa	Contra Costa	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Bell, Steven M.	3/4/94	San Diego	San Diego	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes
Belmontes, Fernando, Jr.	10/6/82	San Joaquin	San Joaquin	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Beltran, Francisco	10/31/14	Kern	Kern	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Bemore, Terry Douglas	11/2/89	San Diego	San Diego	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Benavides, Vicente Figueroa	6/16/93	Kern	Kern	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Bennett, Eric Wayne	1/9/97	Orange	Orange	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Benson, Richard Allen	4/30/87	San Luis Obispo	Santa Barbara	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Bergman, Lawrence Edward	7/8/97	San Diego	San Diego	"White" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	W	No
Berryman, Rodney, Sr.	11/28/88	Kern	Kern	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Bertsch, John Anthony	12/19/00	Sacramento	Sacramento	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Bigelow, Jerry Douglas	5/8/81	Merced	Merced	"Unknown" source: " 4) CDCR materials (Condemned inmate list)"	Unknown	No
Bivert, Kenneth Ray	7/19/01	Monterey	Monterey	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Blacksher, Erven R.	2/9/99	Alameda	Alameda	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Bland, Warren James	5/28/93	Riverside	Riverside	"White" source: " 3) Probation report" "Other: CAP"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Bloyd, Dale Michael	1/25/82	Yuba	Yuba	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Bolden, Clifford Stanley	7/19/91	San Francisco	San Francisco	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Bolin, Paul Clarence	2/25/91	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Bonilla, Steven Wayne	1/20/95	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Bonillas, Louis Lujan	5/20/83	San Bernardino	San Bernardino	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Bonin, William George	8/26/83	Orange	Orange	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Booker, Richard Lonnie	11/22/99	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Box, Christopher Clark	2/22/91	San Diego	San Diego	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Boyce, Kevin Dewayn	9/29/00	Orange	Orange	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Boyde, Richard	4/20/82	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Boyer, Richard Delmer	12/14/84	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Boyette, Maurice	5/7/93	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Bracamontes, Luis Enriquez Monroy	4/25/18	Sacramento	Sacramento	"Hispanic" source: "Other: CAP"	L	Yes
Bracamontes, Manuel	12/14/05	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Bramit, Michael Lamar	9/8/97	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Branner, Willie	2/26/82	Santa Clara	Santa Clara	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Brasure, Spencer Rawlins	8/24/98	Ventura	Ventura	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Breaux, David Anthony	3/12/87	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Brents, Gary Galen	12/15/00	Orange	Orange	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Bridges, Edward Dean	2/20/92	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Brothers, Vincent Edward	9/27/07	Kern	Kern	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Brown, Albert Greenwood, Jr.	2/25/82	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Brown, Andrew Lamont	5/14/92	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Brown, John George	6/15/82	Orange	Orange	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Brown, Michael Charles	3/9/16	Kern	Kern	"Black or African American" source: "4) Probation report"	B	Yes
Brown, Sherhaun Kerod	6/7/12	San Bernardino	San Bernardino	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Brown, Steven Allen	2/23/96	Tulare	Tulare	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Buenrostro, Dora	10/2/98	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Buettner, Jeffree J.	4/23/10	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Bunyard, Jerry Thomas	1/30/81	San Joaquin	San Joaquin	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Burgener, Michael Ray	9/11/81	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Burney, Shaun Kareem	9/16/94	Orange	Orange	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Burris, Nathan	1/18/13	Contra Costa	Contra Costa	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes
Cage, Micky Ray	11/14/03	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Cain, Tracy Dearn	7/12/88	Ventura	Ventura	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Camacho, Adrian George	2/7/06	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Capers, Lee Samuel	9/22/06	San Bernardino	San Bernardino	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Cardenas, Refugio Ruben	3/29/07	Tulare	Tulare	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Caro, Fernando Eros	1/8/82	Fresno	Fresno	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Caro, Socorro Susan	4/5/02	Ventura	Ventura	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Carpenter, David Joseph	7/19/88	Marin	San Diego	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Carpenter, George Allison	5/21/82	Kern	Kern	"White" source: " 2) Inmate's death certificate"	W	No
Carrera, Constantino	10/14/83	Kern	Kern	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Carrington, Celeste Simone	11/23/94	San Mateo	San Mateo	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Carter, Dean Phillip	9/9/91	San Diego	San Diego	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Carter, Frank Dean	4/25/96	Riverside	Riverside	"Black or African American" source: " 2) Inmate's death certificate" "Other: CAP"	B	No
Casares, Jose Lupercio	3/13/92	Tulare	Tulare	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Case, Charles Edward	10/25/96	Sacramento	Sacramento	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Cash, Randall Scott	10/20/92	Alameda	Alameda	"White" source: " 3) CDCR materials (Condemned inmate list)"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Castaneda, Gabriel	1/7/00	San Bernardino	San Bernardino	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Castro, Robert Gonzales	2/21/14	Unknown	Riverside	"Hispanic" source: "4) Probation report"	L	Yes
Catlin, Steven David	7/6/90	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Cervantes, Daniel	4/12/13	Riverside	Riverside	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Chadd, Billy Lee	6/6/79	San Diego	San Diego	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Charles, Edward, III	1/15/99	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Chase, Richard Trenton	6/8/79	Sacramento	Santa Clara	"White" source: "2) Inmate's death certificate"	W	No
Chatman, Erik Sanford	4/9/93	Santa Clara	Santa Clara	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Chavez, Raymond Rudy	5/28/81	Tulare	Tulare	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Cheary, Christopher	1/30/17	Tulare	Tulare	"White" source: "4) Probation report"	W	Yes
Chhoun, Run Peter	1/4/00	San Bernardino	San Bernardino	"Asian" source: "3) Probation report"	A	Yes
Choyce, William Jennings	12/15/08	San Joaquin	San Joaquin	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Cinco, Joselito	6/10/88	San Diego	Orange	"Asian" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	A	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Clair, Kenneth	12/4/87	Orange	Orange	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Clark, Richard Dean	12/18/87	Mendocino	Santa Clara	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Clark, Royal	2/3/95	Fresno	Fresno	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Clark, William Clinton	12/29/97	Orange	Orange	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Coddington, Herbert James	1/20/89	El Dorado	El Dorado	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Coffman, Cynthia Lynn	10/30/89	San Bernardino	San Bernardino	"White" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	W	Yes
Colbert, Tecumseh	12/15/08	San Diego	San Diego	"Black or African American" source: " 3) Probation report"	B	Yes
Coleman, Calvin, Jr.	8/27/81	Sonoma	Sonoma	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Coleman, Russell	11/20/81	San Francisco	San Francisco	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)"	B	No
Combs, Michael Stephen	6/21/93	San Bernardino	San Bernardino	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Contreras, Carlos	4/26/13	Riverside	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Contreras, David Rey	5/12/17	Riverside	Riverside	"Hispanic" source: " 4) Probation report"	L	Yes
Contreras, George Lopez	12/11/96	Tulare	Tulare	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Cook, Joseph Lloyd	9/16/94	San Bernardino	San Bernardino	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Cook, Michael	7/25/08	Riverside	Riverside	"Black or African American" source: " 3) Probation report"	B	Yes
Cook, Walter Joseph	9/2/94	Shasta	San Mateo	"Black or African American" source: "1) Inmate's birth certificate" " 3) CDCR materials (Condemned inmate list)"	B	No
Cooper, Kevin	5/15/85	San Bernardino	San Diego	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Cooper, Leon Chauncey	5/25/01	Sacramento	Sacramento	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Cordova, Joseph Seferino	5/11/07	Contra Costa	Contra Costa	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Cornwell, Glen	4/21/95	Sacramento	Sacramento	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Coronado, Juan Ramon, Jr.	4/17/15	Unknown	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Covarrubias, Daniel Sanchez	10/27/98	Monterey	Monterey	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Cowan, Robert Wesley	8/5/96	Kern	Kern	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Cox, Michael Anthony	11/26/85	El Dorado	El Dorado	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Crawford, Charles Edward	6/7/02	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Crespo, Miguel	12/5/19	Kern	Kern	"Hispanic" source: "4) Probation report"	L	Yes
Crew, Mark Christopher	7/22/93	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Crittenden, Steven Edward	6/12/89	Butte	Placer	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Croy, Patrick Eugene	8/2/79	Siskiyou	Placer	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Crummel, James Lee	7/9/04	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Cruz, Gerald Dean	10/23/92	Stanislaus	Alameda	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Cruz, Tomas Verano	9/9/94	Shasta	Sonoma	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Cunningham, John	1/12/96	San Bernardino	San Bernardino	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	W	Yes
Curl, Robert Zane	7/15/93	Fresno	Fresno	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	W	Yes
Dalton, Kerry Lyn	5/23/95	San Diego	San Diego	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Daniels, David Scott	2/28/01	Sacramento	Sacramento	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Daniels, Jackson Chambers, Jr.	3/14/84	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Danielson, Robert Wayne	11/13/86	Mendocino	Mendocino	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	W	No
Danks, Joseph Martin	4/2/93	Kern	Kern	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
D'Arcy, Jonathan Daniel	4/11/97	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
DaVeggio, James Anthony	9/25/02	Alameda	Alameda	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Davenport, John Galen	11/4/81	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Davis, Larry David	3/8/90	Ventura	Ventura	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	No
Davis, Richard Allen	9/26/96	Sonoma	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Day, Christopher Teddy	3/3/87	Alameda	Alameda	"Black or African American" source: "2) Inmate's death certificate"	B	No
Deen, Omar Richard	10/5/00	Imperial	Imperial	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Deere, Ronald Lee	11/9/82	Riverside	Riverside	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
DeHoyos, Richard Lucio	8/27/93	Orange	Orange	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Deleon, Skylar Julius	4/10/09	Orange	Orange	"White" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	W	Yes
Delgado, Anthony Gilbert	6/21/00	Kings	Kings	"Hispanic" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Dement, Ronnie Dale	9/26/94	Fresno	Fresno	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Demetrulias, Gregory Spiros	5/19/95	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Demolle, Alex	12/14/07	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Dennis, William Michael	9/6/88	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
DePriest, Timothy Lee	5/27/94	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
DeSantis, Stephen	2/3/86	Sacramento	Sacramento	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)" "Other: CAP"	W	No
Diaz, Robert Rubane	6/15/84	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Dickey, Colin Raker	2/27/92	Fresno	Fresno	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Doolin, Keith Zon	6/18/96	Fresno	Fresno	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Douglas, Fred Berre	4/5/85	Orange	Orange	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Drews, Martin Dexter	7/9/07	Imperial	Imperial	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Duff, Dewey Joe	3/8/02	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Dunkle, Jon Scott	2/7/90	San Mateo	San Mateo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Dunlap, Dean Eric	4/14/06	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Dunn, Aaron Norman	7/7/10	Sacramento	Sacramento	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Dunson, Robert Lee	5/15/15	Unknown	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Dworak, Douglas Edward	6/30/05	Ventura	Ventura	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Dyer, Alfred R.	9/26/83	Alameda	Alameda	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Dykes, Ernest Edward	12/22/95	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Easley, Elbert Lee	8/9/79	Monterey	Monterey	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Edelbacher, Peter	5/25/83	Fresno	Fresno	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Edwards, Robert Mark	9/9/98	Orange	Orange	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "Other: Police reports"	W	Yes
Edwards, Thomas Francis	12/11/86	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Elliot, Michael Lee	10/31/96	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Ellis, James Dawntay	6/16/17	Unknown	San Bernardino	"Black or African American" source: "4) Probation report"	B	Yes
Emdy, Corvin Charles	9/9/93	Kern	Kern	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	W	No
Enraca, Sonny	7/23/99	Riverside	Riverside	"Other" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	O	Yes
Erskine, Scott Thomas	9/1/04	San Diego	San Diego	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Ervin, Curtis Lee	6/28/91	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Ervine, Dennis Newton	5/31/96	Lassen	Sacramento	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Esparza, Angel Anthony	2/20/15	Riverside	Riverside	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Espinoza, Antonio	9/18/86	San Joaquin	San Joaquin	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Eubanks, Susan Dianne	10/13/99	San Diego	San Diego	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Evans, Christopher	4/23/10	Alameda	Alameda	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Evans, Steve Carl	1/9/09	Orange	Orange	"White" source: " 3) Probation report" " 4) CDCR materials (Condemned inmate list)"	W	Yes
Fairbank, Robert Green	9/1/89	San Mateo	San Mateo	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Famalaro, John Joseph	9/5/97	Orange	Orange	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Farley, Richard Wade	1/17/92	Santa Clara	Santa Clara	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Farmer, Lee Perry	1/17/83	Riverside	Riverside	"Unknown" source: " 4) CDCR materials (Condemned inmate list)"	Unknown	No
Fauber, Curtis Lynn	5/16/88	Ventura	Ventura	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Felix, John Hernandez	8/30/19	Riverside	Riverside	"Unknown" source:	Unknown	Yes
Felix, Miguel Enrique	5/26/15	Riverside	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Fierro, David Rey	8/22/86	Riverside	Riverside	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Fierros, Eusebio, Jr.	5/18/12	Riverside	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Fletcher, Marcus	11/18/11	Riverside	Riverside	"Black or African American" source: "4) Probation report"	B	Yes
Flinner, Michael William	3/29/04	San Diego	San Diego	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Flores, Alfred, III	5/19/03	San Bernardino	San Bernardino	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Ford, Wayne Adam	3/16/07	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Forte, Melvin Earl	5/6/11	Santa Clara	Santa Clara	"Black or African American" source: "4) Probation report"	B	Yes
Foster, Richard Don	12/13/96	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Fowler, Rickie Lee	1/28/13	San Bernardino	San Bernardino	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Frank, Theodore Francis	2/4/80	Ventura	Orange	"White" source: "2) Inmate's death certificate"	W	No
Frazier, Robert Ward	12/15/06	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Frazier, Travis	9/16/13	Kern	Kern	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Frederickson, Daniel Carl	1/9/98	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Freeman, Fred Harlan	10/7/87	Alameda	Alameda	"White" source: "1) Inmate's birth certificate" "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Friend, Jack Wayne	6/19/92	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Frye, Jerry Grant	9/12/88	Amador	Amador	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Fuller, Robert Dale	1/14/15	Kern	Kern	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Gallego, Gerald Armond	6/21/83	Sacramento	Contra Costa	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Galvan, Robert	5/15/13	Kings	Kings	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Gamache, Richard Cameron	4/2/96	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Garceau, Robert Frederick	7/30/87	Kern	Kern	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	W	No
Garrison, Richard William	1/16/81	San Bernardino	San Bernardino	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Garton, Todd Jesse	4/27/01	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Gates, Oscar	8/7/81	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Geier, Christopher Adam	7/21/95	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
George, Johnaton Sampson	7/17/95	San Diego	San Diego	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Ghent, David Luther	10/30/79	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Ghobrial, John Samuel	4/10/02	Orange	Orange	"Other" source: "3) CDCR materials (Condemned inmate list)"	O	Yes
Givens, Todd	7/8/04	Tulare	Tulare	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Gonzales, Ivan Joe	1/13/98	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Gonzales, Veronica Utilia	7/20/98	San Diego	San Diego	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Gordon, Patrick Bruce	5/3/85	San Joaquin	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Gordon, Steven Dean	2/3/17	Orange	Orange	"White" source: "4) Probation report"	W	Yes
Graham, Jawaun Deion	1/13/12	Riverside	Riverside	"Black or African American" source: "4) Probation report"	B	Yes
Graham, Larry Christopher	1/31/03	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Grant, Richard Edward	5/28/82	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Green, Charles Alan	6/16/78	Sutter	Sutter	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Green, Earl Ellis	6/25/12	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Griffin, Donald	11/26/80	Fresno	Fresno	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Grimes, Gary Lee	1/27/99	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Guardado, Israel Ramirez	1/31/20	Unknown	Riverside	"Unknown" source:	Unknown	Yes
Guerra, Danny Montana	11/12/80	San Bernardino	San Bernardino	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Guerrero, Jose	6/23/09	Madera	Madera	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Gurule, Raymond Anthony	12/19/90	San Mateo	San Mateo	"American Indian or Alaska Native (AIAN)" source: "Other: CDCR materials (central file)"	O	No
Gutierrez, Isaac, Jr.	11/14/90	San Bernardino	San Bernardino	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	No
Guzman, Gary Lee	12/22/81	Stanislaus	El Dorado	"Asian" source: "2) Inmate's death certificate"	A	No
Gzikowski, John	9/8/78	San Francisco	San Francisco	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Hajek, Stephen Edward	10/18/95	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Hamilton, Alexander Rashad	11/2/07	Contra Costa	Contra Costa	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Hamilton, Bernard Lee	3/2/81	San Diego	San Diego	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	B	No
Hamilton, Billy Ray	10/16/81	Fresno	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)" "Other: CAP"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Hamilton, Michael Allen	12/17/82	Tulare	Tulare	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Hann, Jessica Marie	2/21/14	Riverside	Riverside	"White" source: "4) Probation report"	W	Yes
Harris, Robert Alton	3/6/79	San Diego	San Diego	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Harris, Willie Leo	8/24/99	Kern	Kern	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Harrison, Cedric Seth	8/30/93	Alameda	Alameda	"Black or African American" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	B	No
Hart, Joseph William	5/27/88	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Harts, Tyrone Levoid	1/30/15	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)"	B	Yes
Hartsch, Cisco James	11/13/98	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Hawkins, Jeffrey Jay	1/31/90	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Hawkins, Ronald Chester	9/20/81	Del Norte	Shasta	"White" source: "2) Inmate's death certificate"	W	No
Hayes, Blufford, Jr.	1/22/82	San Joaquin	San Joaquin	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Hayes, Royal Kenneth	8/18/86	Santa Cruz	Stanislaus	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Hazlett, Larry Kusuth	7/14/04	Kern	Kern	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Heishman, Harvey Lee, III	3/30/81	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Helzer, Glen Taylor	3/11/05	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Helzer, Justin Alan	3/11/05	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Henderson, Paul Nathan	5/25/01	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Hendricks, Edgar Morris	12/4/81	San Francisco	San Francisco	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Henriquez, Christopher	6/2/00	Contra Costa	Contra Costa	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Hensley, Paul Loyde	10/16/95	San Joaquin	San Joaquin	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Hernandez, George Anthony	1/29/10	Riverside	Riverside	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Hernandez, Jesus Ciane	3/21/91	Stanislaus	Stanislaus	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Hill, Michael S.	1/21/88	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Hillhouse, Dannie Ray	10/13/92	Butte	Butte	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Hin, Mao	2/24/06	San Joaquin	San Joaquin	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Hines, Gary Dale	7/8/88	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Hirschfield, Richard Joseph	1/25/13	Sacramento	Sacramento	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Hitchings, Keith Sanford	5/6/83	Humboldt	Humboldt	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Hogan, Carl David	4/2/79	Kern	Kern	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Holloway, Duane	7/8/85	Sacramento	Sacramento	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Holt, John Lee	5/30/90	Kern	Kern	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Holt, Steven Vincent	3/14/80	Monterey	Monterey	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Horning, Danny Ray	1/26/95	San Joaquin	San Joaquin	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Houston, Eric Christopher	9/20/93	Yuba	Napa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Hovarter, Jackie Ray	11/30/90	Humboldt	Humboldt	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Hovey, Richard Adams	2/10/82	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Howard, Albert Cecil	8/3/83	Tulare	Tulare	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Howard, Demetrius Charles	12/7/95	San Bernardino	San Bernardino	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Howard, Gary Lee, Sr.	5/27/82	San Bernardino	San Bernardino	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Hoyos, Jaime Armando	7/11/94	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Hoyt, Ryan James	2/7/03	Santa Barbara	Santa Barbara	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Hronis, Jeffery Lee	12/19/00	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Huggins, Michael James	12/17/93	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Hughes, Kristin William	10/2/90	Monterey	Monterey	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Hughes, Mervin Ray	6/10/05	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Hunter, Lorraine Alison	12/8/17	Riverside	Riverside	"Black or African American" source: "4) Probation report"	B	Yes
Hunter, Michael Wayne	3/28/84	San Mateo	San Mateo	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Ihde, Michael Patrick	1/3/97	Alameda	Alameda	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Jablonski, Phillip Carl	8/12/94	San Mateo	San Mateo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Jackson, Bailey	11/8/05	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Jackson, Jonathan Keith	2/18/00	Riverside	Riverside	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Jackson, Noel	6/2/89	Riverside	Riverside	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Jasso, Christopher Guy	1/8/10	Riverside	Riverside	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)"	L	Yes
Jennings, Glenn Wade	11/5/10	Sacramento	Sacramento	"Black or African American" source: " 4) Probation report"	B	Yes
Jennings, Martin Carl	7/22/99	San Bernardino	San Bernardino	"White" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	W	Yes
Jennings, Michael Wayne	3/27/84	Contra Costa	Contra Costa	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	No
Jennings, Wilbur	11/12/86	Fresno	Fresno	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Jimenez, Eric Patrick	11/15/18		Tulare	"Hispanic" source: " 4) Probation report"	L	Yes
John, Emrys Justin	8/16/13	Riverside	Riverside	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Johns, Raymond Frederick	2/8/95	Santa Clara	Santa Clara	"White" source: " 3) CDCR materials (Condemned inmate list)"	W	No
Johnsen, Brian David	6/22/94	Stanislaus	Stanislaus	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Johnson, Billy Joe	11/23/09	Orange	Orange	"White" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Johnson, Jerrold Elwin	11/9/00	Lake	Lake	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Johnson, Joe Edward	5/28/81	Sonoma	Sacramento	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Johnson, Laverne	4/1/88	San Mateo	San Mateo	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Johnson, Lumord	4/8/02	Riverside	Riverside	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Johnson, Michael Raymond	4/27/98	Ventura	Ventura	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Johnson, Willie Darnell	8/5/87	Contra Costa	Contra Costa	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Jones, Albert	9/20/96	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Jones, Bryan Maurice	9/16/94	San Diego	San Diego	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	B	Yes
Jones, Glen Joseph	6/11/10	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Jones, Jeffrey Gerard	2/22/89	Sacramento	Sacramento	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Jones, Michael Lamont	12/13/91	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Jones, Troy Lee	7/23/82	Merced	Merced	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Jones, William Alfred, Jr.	2/8/99	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Jurado, Robert J., Jr.	10/7/94	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Karis, James Leslie	9/17/82	El Dorado	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Keenan, Maurice J.	1/21/83	San Francisco	San Francisco	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Kelley, Jimmy Dale	8/13/10	San Bernardino	San Bernardino	"White" source: "3) CDCR materials (Condemned inmate list)"	W	Yes
Kelly, Horace Edwards	6/25/86	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Kelly, Horace Edwards	3/24/88	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Kemp, Darryl Thomas	6/25/09	Contra Costa	Contra Costa	"White" source: "3) CDCR materials (Condemned inmate list)"	W	Yes
Kennedy, Jerry Noble	12/20/93	Colusa	Colusa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Kennedy, John Fitzgerald	5/1/09	Orange	Orange	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Kipp, Martin James	9/18/87	Orange	Orange	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Kling, Randolph Clifton	2/26/10	Ventura	Ventura	"White" source: "3) CDCR materials (Condemned inmate list)"	W	Yes
Kolmetz, Jeffrey Wayne	5/18/89	Sacramento	Sacramento	"White" source: "2) Inmate's death certificate"	W	No
Koontz, Herbert Harris	11/19/93	Sacramento	Sacramento	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	W	No
Kopatz, Kim Raymond	3/21/01	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Kraft, Randy Steven	11/29/89	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Krebs, Rex Allan	7/20/01	San Luis Obispo	San Luis Obispo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Lamb, Michael Allan	8/22/08	Orange	Orange	"White" source: "3) Probation report"	W	Yes
Landry, Daniel Gary	9/11/01	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Lang, Kenneth Burton, Jr.	12/5/84	Santa Barbara	Santa Barbara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Lanphear, Ronald Eugene	4/11/79	San Bernardino	San Bernardino	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Lawley, Dennis Harold	2/26/90	Stanislaus	Stanislaus	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Leach, Michael Todd	7/11/80	Fresno	Fresno	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Ledesma, Fermin Rodriguez	3/14/80	Santa Clara	Santa Clara	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Lee, Chol Soo	5/24/79	San Joaquin	San Joaquin	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Lee, Philian Eugene	7/9/99	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Lenart, Thomas Howard	10/6/95	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Leon, Jose Luis	5/12/06	Riverside	Riverside	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Leonard, Eric Royce	6/13/96	Sacramento	Sacramento	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Letner, Richard Lacy	4/24/90	Tulare	Tulare	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	W	Yes
Lewis, Keith Allen	2/25/00	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Lewis, Michael Bernard	5/1/98	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Lewis, Milton Otis	12/6/90	Shasta	Shasta	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Lewis, Raymond Anthony	3/7/91	Fresno	Fresno	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Lightsey, Christopher Charles	8/15/95	Kern	Kern	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report" "Other: CT"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Lindberg, Gunner Jay	12/12/97	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Linton, Daniel Andrew	6/17/99	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Livingston, Waymon	4/26/13	Orange	Orange	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Loker, Keith Thomas	2/17/95	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Lopez, Bobby	11/14/97	Santa Clara	Santa Clara	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Lopez, Elias Carmona	1/13/17	Riverside	Riverside	"Hispanic" source: "4) Probation report"	L	Yes
Lopez, Johnny	1/13/17	Riverside	Riverside	"Hispanic" source: "4) Probation report"	L	Yes
Lopez, Michael Augustine	7/20/01	Alameda	Alameda	"Hispanic" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	L	Yes
Lucas, David Allen	9/19/89	San Diego	San Diego	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Lucero, Phillip Louis	1/26/82	San Bernardino	San Bernardino	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Luther, Johnathan Ross	4/27/07	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Lynch, Franklin	4/28/92	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Macias, Armando	9/1/11	Orange	Orange	"Hispanic" source: "4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Magana, Belinda	5/1/15	Riverside	Riverside	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	Yes
Mai, Hung Thanh	6/23/00	Orange	Orange	"Asian" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	A	Yes
Majors, James David	2/4/91	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Malone, Kelvin Shelby	6/14/83	San Bernardino	San Bernardino	"Black or African American" source: "Other: CSC opinion"	B	No
Manibusan, Joseph Kekoa	1/24/01	Monterey	Monterey	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Manzo, Jesse	8/2/13	Riverside	Riverside	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Marks, Delaney Geral	6/3/94	Alameda	Alameda	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Marlow, James Gregory	8/31/89	San Bernardino	San Bernardino	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Marlow, James Gregory	5/8/92	Orange	Orange	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Marshall, George Edward	6/28/83	Stanislaus	Stanislaus	"Black or African American" source: "2) Inmate's death certificate" "Other: CAP"	B	No
Marshall, Ryan Michael	5/9/86	Tulare	Tulare	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Martin, Romaine Ulyses	5/16/16	Riverside	Riverside	"Black or African American" source: "Other: "	B	Yes
Martinez, Alberto	8/6/10	Orange	Orange	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Martinez, Carlos	8/21/09	Orange	Orange	"Hispanic" source: " 4) Probation report"	L	Yes
Martinez, Michael Matthew	8/29/97	Alameda	Alameda	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Martinez, Omar Fuentes	5/10/93	Riverside	Riverside	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Martinez, Tommy Jesse	9/25/98	Santa Barbara	Santa Barbara	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Mason, David Edwin	1/27/84	Alameda	Alameda	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Massie, Robert Lee	5/25/79	San Francisco	San Francisco	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Masters, Jarvis Jay	7/30/90	Marin	Marin	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Mataele, Tupoutoe	10/7/05	Orange	Orange	"Other" source: " 4) CDCR materials (Condemned inmate list)"	O	Yes
Maury, Robert Edward	11/3/89	Shasta	Shasta	"White" source: "1) Inmate's birth certificate" " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Mayfield, Demetrie Ladon	9/30/83	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Mayfield, Dennis	5/4/88	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
McCurdy, Gene Estel	4/22/97	Kings	Kings	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
McDonald, Robert F.	5/31/91	Alameda	Alameda	"White" source: "2) Inmate's death certificate"	W	No
McKinnon, Crandell	3/5/99	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
McKinzie, Kenneth	8/26/99	Ventura	Ventura	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
McKnight, Anthony	11/17/08	Alameda	Alameda	"Black or African American" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	B	No
McLain, Robert Cruz	5/12/81	Ventura	Ventura	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
McPeters, Ronald Avery	5/7/86	Fresno	Fresno	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
McWhorter, Richard	2/26/98	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Medina, Teofilo, Jr.	2/26/87	Orange	Orange	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Medina, Teofilo, Jr.	10/25/89	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Melendez, Angelo Michael	8/18/03	San Joaquin	San Joaquin	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Melton, James Andrew	3/18/83	Orange	Orange	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Mendez, Julian Alejandro	11/19/04	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Mendoza, Huber Joel	5/18/06	Stanislaus	Stanislaus	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Mendoza, Luis Alonso	9/10/08	San Bernardino	San Bernardino	"Hispanic" source: "3) Probation report"	L	Yes
Mendoza, Martin	12/23/97	San Bernardino	San Bernardino	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Merriman, Justin James	5/1/01	Ventura	Ventura	"White" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	W	Yes
Merritt, Charles Ray	1/21/20	San Bernardino	San Bernardino	"Unknown" source:	Unknown	Yes
Michaels, Kurt	7/31/90	San Diego	San Diego	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Michaud, Michelle Lyn	9/25/02	Alameda	Alameda	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Mickel, Andrew Hampton	4/27/05	Tehama	Colusa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Mickey, Douglas Scott	9/23/83	Placer	San Mateo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Mickle, Denny	4/17/86	San Mateo	San Mateo	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Miles, Johnny Duane	2/8/00	San Bernardino	San Bernardino	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Miller, Tyrone	7/19/13	Unknown	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Mills, David	11/2/12	Alameda	Alameda	"Black or African American" source: "4) Probation report"	B	Yes
Mills, Jeffery Jon	3/10/97	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Millwee, Donald Ray	3/21/90	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Milner, Lynn Bernard	4/2/82	Santa Clara	Santa Clara	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Mincey, Bryan Joseph	6/14/85	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Miracle, Joshua Martin	1/24/06	Santa Barbara	Santa Barbara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Miranda Guerrero, Victor M.	8/4/03	Orange	Orange	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Mitcham, Stephan Louis	7/6/84	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Mitchell, Louis, Jr.	10/4/06	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Moffett, Jessie Ray	9/2/92	San Diego	San Diego	"Black or African American" source: "2) Inmate's death certificate"	B	No
Molano, Carl Edward	2/29/08	Alameda	Alameda	"Hispanic" source: "3) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Monterroso, Christian Antonio	8/12/93	Orange	Orange	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Montes, Joseph Manuel	3/18/97	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Montiel, Richard Galvan	11/20/79	Kern	Kern	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Moore, David Lee	4/30/80	Alameda	Alameda	"Black or African American" source: "2) Inmate's death certificate"	B	No
Moore, Ronald Wayne	8/16/99	Monterey	Monterey	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Morales, Johnny	9/13/05	San Bernardino	San Bernardino	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Morales, Michael Angelo	6/14/83	San Joaquin	Ventura	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Morelos, Valdamir Fred	2/21/96	Santa Clara	Santa Clara	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Morgan, Edward Patrick	7/19/96	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Morris, Bruce Wayne	8/27/87	Sierra	San Joaquin	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Mozingo, Ronny William	4/25/80	Sacramento	Sacramento	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Mroczko, Richard John	9/13/79	San Luis Obispo	San Luis Obispo	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Mungia, John	4/7/97	Riverside	Riverside	"American Indian or Alaska Native (AIAN)" "Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report" "Other: Family Declarations"	O	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Murtaza, Iftekhhar	3/3/15	Orange	Orange	"Other" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	O	Yes
Murtishaw, David Leslie	4/27/79	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Musselwhite, Joseph Timothy	9/25/90	Sacramento	Sacramento	"White" source: "2) Inmate's death certificate" "3) CDCR materials (Condemned inmate list)"	W	No
Myles, John	4/23/01	San Bernardino	San Bernardino	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Nadey, Giles Albert, Jr.	4/12/00	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Narine, Naresh	5/1/15	Riverside	Riverside	"Other" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	O	Yes
Naso, Joseph	11/22/13	Unknown	Marin	"White" source: "3) CDCR materials (Condemned inmate list)"	W	Yes
Navarro, Anthony	7/11/08	Orange	Orange	"Hispanic" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	L	Yes
Nealy, Eddie Ricky	12/4/15	Fresno	Fresno	"Black or African American" source: "4) Probation report"	B	Yes
Neely, Charles Frederick	3/11/83	El Dorado	El Dorado	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Nelson, Tanya Jaime	4/23/10	Orange	Orange	"Asian" source: "4) Probation report"	A	Yes
Ng, Charles Chitat	6/30/99	Calaveras	Orange	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Nguyen, Lam Thanh	1/28/99	Orange	Orange	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Nicolaus, Robert Henry	6/23/87	Sacramento	Santa Clara	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Nissensohn, Joseph Michael	6/5/14	El Dorado	El Dorado	"White" source: "3) CDCR materials (Condemned inmate list)"	W	Yes
Noguera, William Adolf	1/29/88	Orange	Orange	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Nowlin, Kenneth Lee	7/26/13	Unknown	Kern	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Odle, James Richard	8/12/83	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
O'Malley, James Francis, III	11/21/91	Santa Clara	Santa Clara	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	W	Yes
Osband, Lance Ian	4/8/88	Sacramento	Sacramento	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Oyler, Raymond Lee	6/5/09	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Padilla, Alfredo Alvarado	2/7/90	Stanislaus	Stanislaus	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Page, Terrance Charles	10/31/97	San Bernardino	San Bernardino	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Paniagua, Rodrigo Ortiz, Jr.	12/16/10	Santa Clara	Santa Clara	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Parker, Calvin Lamont	2/24/03	San Diego	San Diego	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Parker, Gerald	1/21/99	Orange	Orange	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Parson, Richard Ray	10/11/96	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Payton, William Charles	3/9/82	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Pearson, Michael Nevail	12/18/96	Contra Costa	Contra Costa	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	B	Yes
Pensinger, Brett Patrick	9/20/82	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Penuelas, Jesus Guadalupe Velazquez	8/8/08	Riverside	Riverside	"Hispanic" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	L	Yes
Peoples, Louis James	8/4/00	San Joaquin	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Perez, Joseph Andrew, Jr.	1/25/02	Contra Costa	Contra Costa	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Perry, Clifton	7/24/96	Kings	Kings	"Black or African American" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	B	Yes
Peterson, Scott Lee	3/16/05	San Mateo	San Mateo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Phillips, Richard Louis Arnold	2/20/80	Madera	Madera	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Plata, Noel Jesse	8/15/08	Orange	Orange	"Hispanic" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	L	Yes
Pollock, Milton Ray	6/10/94	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Poore, Christopher Eric	2/20/02	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Potts, Thomas	7/23/98	Kings	Kings	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Powell, Carl Devon	11/10/94	Sacramento	Sacramento	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Poyner, Bill Charles	12/16/97	Orange	Orange	"White" source: "2) Inmate's death certificate" "Other: CAP"	W	No
Price, Curtis Floyd	7/10/86	Humboldt	Humboldt	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Pride, Timothy	8/6/87	Sacramento	Sacramento	"Black or African American" source: "2) Inmate's death certificate"	B	No
Prieto, Alfredo R.	6/18/92	San Bernardino	San Bernardino	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Prince, Cleophus, Jr.	11/5/93	San Diego	San Diego	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Proctor, William Arnold	6/28/83	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Quartermain, Drax	4/10/89	San Mateo	San Mateo	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Raley, David Allen	5/17/88	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Ramirez, Irving Alexander	8/3/07	Alameda	Alameda	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Ramirez, Juan Villa	7/20/01	Kern	Kern	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Ramirez, Richard Raymond	8/8/85	Orange	Orange	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Ramos, Marcelino	1/25/80	Orange	Orange	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	No
Ramos, William James, Jr.	1/8/93	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Rangel, Pedro, Jr.	2/8/99	Madera	Madera	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes
Ray, Clarence, Jr.	7/28/89	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Redd, Stephen Moreland	2/28/97	Orange	Orange	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Reed, David John	10/31/11	Riverside	Riverside	"White" source: "4) Probation report"	W	No
Reynolds, Tony Lee	5/4/07	Riverside	Riverside	"White" source: "2) Inmate's death certificate"	W	No
Rhoades, Cherie Louise	4/10/17	Modoc	Modoc	"Unknown" source:	Unknown	Yes
Rhoades, Robert Boyd	9/10/99	Sutter	Sacramento	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Rhoades, Robert Boyd	6/19/07	Alameda	Alameda	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Rices, Jean Pierre	8/21/09	San Diego	San Diego	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Rich, Darrell Keith	1/23/81	Shasta	Yolo	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Richardson, Charles Keith	10/7/92	Tulare	Tulare	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	No
Richardson, Jason Russell	11/28/11	Orange	Orange	"White" source: " 4) Probation report"	W	Yes
Riel, Charles Dell	10/14/88	Shasta	Shasta	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Riggs, Billy Ray	10/28/94	Riverside	Riverside	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Rivera, Cuitlahuac Tahua	6/21/07	Merced	Colusa	"Other" source: " 4) CDCR materials (Condemned inmate list)"	O	Yes
Rivera, Samuel Ramon	6/18/09	Tulare	Tulare	"Hispanic" source: " 3) Probation report"	L	Yes
Robbins, Malcolm Joseph	5/12/83	Santa Barbara	Santa Barbara	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Roberts, Larry H.	5/27/83	Solano	Solano	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Robertson, Andrew Edward	5/31/78	San Bernardino	San Bernardino	"White" source: " 2) Inmate's death certificate"	W	No
Rodrigues, Jose Arnaldo	10/28/88	San Mateo	San Mateo	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Rodriguez, Jerry	2/21/96	Fresno	Fresno	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Rodriguez, Luis Valenzuela	7/8/81	Yolo	San Mateo	"Unknown" source: " 4) CDCR materials (Condemned inmate list)"	Unknown	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Rodriguez, Timothy Titus	1/6/10	Kern	Kern	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	No
Rogers, David Keith	5/2/88	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Rogers, Ramon Jay	9/10/97	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Romero, Orlando Gene	8/28/96	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Rottiers, Brooke Marie	10/22/10	Riverside	Riverside	"White" source: "4) Probation report"	W	Yes
Rountree, Charles F.	8/11/95	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Rowland, Guy Kevin	6/29/88	San Mateo	San Mateo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Roybal, Rudolph Jose	10/20/92	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Ruiz, Albert	1/27/03	Merced	Merced	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Ruiz, Alejandro Gilbert	2/21/80	Ventura	Ventura	"Hispanic" source: "1) Inmate's birth certificate" "Other: CAP"	L	No
Rundle, David Allen	9/21/89	Placer	Placer	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Russell, Timothy	1/8/99	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Salcido, Ramon Bojorquez	12/17/90	Sonoma	San Mateo	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Samayoa, Richard Gonzales	6/28/88	San Diego	San Diego	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
San Nicolas, Rodney Jesse	8/31/92	Stanislaus	Stanislaus	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Sanchez, Gilbert Bernard	12/28/16	San Bernardino	San Bernardino	"Hispanic" source: " 4) Probation report"	L	Yes
Sanchez, Juan Ramon	3/31/00	Tulare	Tulare	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Sanchez, Teddy Brian	10/31/88	Kern	Kern	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Sanchez, Vincent Henry	11/4/03	Ventura	Ventura	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Sanders, Ronald Lee	3/3/82	Kern	Kern	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Sapp, John	10/16/91	Contra Costa	Contra Costa	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Sarinana, Cathy Lynn	6/26/09	Riverside	Riverside	"White" source: " 3) Probation report"	W	Yes
Sarinana, Raul Ricardo	6/26/09	Riverside	Riverside	"Hispanic" source: " 3) Probation report"	L	Yes
Sattiewhite, Christopher James	4/25/94	Ventura	Ventura	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Schmeck, Mark Lindsey	4/5/90	Alameda	Alameda	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Schultz, Michael Joseph	3/26/03	Ventura	Ventura	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Scott, David Lynn	3/19/98	Riverside	Riverside	"Other" source: " 4) CDCR materials (Condemned inmate list)"	O	Yes
Scott, Royce Lyn	9/17/97	Riverside	Riverside	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Scully, Robert Walter	6/13/97	Sonoma	Sonoma	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Seaton, Ronald Harold	6/16/89	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Self, Christopher	8/28/96	Riverside	Riverside	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Serna, Herminio	11/21/97	Santa Clara	Santa Clara	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	No
Seumanu, Ropati Afatia	12/12/00	Alameda	Alameda	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Sheldon, Jeffrey Theodore	12/19/85	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Shermantine, Wesley Howard, Jr.	5/16/01	San Joaquin	Santa Clara	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Silbertson, Steven Clark	11/18/81	Stanislaus	Stanislaus	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Silva, Benjamin Wai	3/15/82	San Bernardino	San Bernardino	"Other" source: "3) CDCR materials (Condemned inmate list)"	O	No
Silveria, Daniel Todd	6/13/97	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Simon, Richard Nathan	11/2/01	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Siripongs, Jaturun	4/22/83	Orange	Orange	"Asian" source: "4) Probation report"	A	No
Sivongxxay, Vaene	4/29/99	Fresno	Fresno	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Sixto, Felipe Evangelista	2/17/83	Kern	Kern	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Slaughter, Michael Corey	11/27/91	Stanislaus	Stanislaus	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Smith, Floyd Daniel	10/16/97	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Smith, Gregory Calvin	8/14/92	Santa Clara	Santa Clara	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Smith, Gregory Scott	4/3/92	Ventura	Ventura	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Smith, Paul Gordon, Jr.	12/6/02	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Smith, Robert Lee	9/30/93	Contra Costa	Contra Costa	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Smithey, George Hatton	7/18/89	Calaveras	Calaveras	"White" source: "3) CDCR materials (Condemned inmate list)" "Other: Disposition of Arrest"	W	No
Snyder, Janeen Marie	9/7/06	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Solomon, Morris, Jr.	9/16/92	Sacramento	Sacramento	"Black or African American" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	B	Yes
Souza, Matthew Aric	2/19/99	Alameda	Alameda	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Spencer, Christopher Alan	11/7/96	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Stankewitz, Douglas Ray	10/12/78	Fresno	Fresno	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Stankewitz, Laird Gene	10/23/81	Inyo	Inyo	"White" source: "2) Inmate's death certificate"	W	No
Stanley, Darren Cornelius	7/29/91	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Stanley, Gerald Frank	2/7/84	Lake	Butte	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Stayner, Cary Anthony	12/12/02	Mariposa	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Steele, Raymond Edward	7/24/90	Shasta	Shasta	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Steskal, Maurice Gerald	2/6/04	Orange	Orange	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Stevens, Charles	7/30/93	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Stewart, Richard Bert	4/26/91	Contra Costa	Contra Costa	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Streeter, Howard Larcell	4/1/99	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Sturm, Gregory Allen	2/26/93	Orange	Orange	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Suarez, Arturo Juarez	11/1/01	Placer	Napa	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Suff, William Lester	10/26/95	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Sully, Anthony John	7/15/86	San Mateo	San Mateo	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Sykes, Kesaun Kedron	11/7/14	Riverside	Riverside	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Tafoya, Ignacio Arriola	6/6/95	Orange	Orange	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Tate, Gregory O.	3/5/93	Alameda	Alameda	"Black or African American" source: "1) Inmate's birth certificate" " 3) CDCR materials (Condemned inmate list)"	B	Yes
Taylor, Brandon Arnae	6/27/97	San Diego	San Diego	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Taylor, Freddie Lee	5/30/86	Contra Costa	Contra Costa	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Taylor, Keith Desmond	6/5/96	San Bernardino	San Bernardino	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Taylor, Robert Clarence	1/30/92	Orange	Orange	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Thomas, Alex Dale	11/29/00	Sacramento	Sonoma	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Thomas, Correll Lamont	10/7/99	San Diego	San Diego	"Black or African American" source: " 3) Probation report" " 4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Thomas, Hilbert Pineil	6/13/14	Orange	Orange	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Thomas, Justin Heath	4/1/08	Riverside	Riverside	"White" source: "3) Probation report"	W	Yes
Thomas, Keith Tyson	1/16/98	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Thomas, Ralph International	9/25/86	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Thompson, James Alvin	10/21/96	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Thompson, Maurice Seton	9/29/78	Orange	Orange	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Thompson, Robert Jackson	12/6/83	Orange	Orange	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Thompson, Thomas Martin	8/17/84	Orange	Orange	"White" source: "Other: CDCR materials (Inmates executed)"	W	No
Thomson, John Wayne	4/4/14	San Bernardino	San Bernardino	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Thornton, Mark Scott	5/15/95	Ventura	Ventura	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Thornton, Michael Forrest	9/7/06	Riverside	Riverside	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Threats, Derlyn Ray	8/19/10	San Diego	San Diego	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Tobin, Christopher Allan	4/24/90	Tulare	Tulare	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)"	W	Yes
Topete, Marco Antonio	2/7/12	Yolo	Yolo	"Hispanic" source: "4) Probation report"	L	Yes
Townsel, Anthony Letrice	9/13/91	Madera	Madera	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Tran, Ronald Tri	8/15/08	Orange	Orange	"Asian" source: "3) Probation report"	A	Yes
Travis, John Raymond	6/13/97	Santa Clara	Santa Clara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Trinh, Dung Dinh Anh	4/14/03	Orange	Orange	"Other" source: "4) CDCR materials (Condemned inmate list)"	O	Yes
Trujeque, James	11/21/97	Santa Clara	Santa Clara	"Hispanic" source: "4) CDCR materials (Condemned inmate list)"	L	Yes
Tulk, James David	10/9/92	Shasta	Shasta	"White" source: "2) Inmate's death certificate" "4) Probation report"	W	No
Tully, Richard Christopher	12/4/92	Alameda	Alameda	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Turner, Richard Dean	4/7/80	San Bernardino	San Bernardino	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Turner, Thaddaeus Louis	12/21/84	Merced	Merced	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Urdiales, Andrew	10/5/18	Orange	Orange	"Hispanic" source: "4) Probation report"	L	No
Valencia, Alfredo	1/23/96	Orange	Orange	"Hispanic" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	L	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Valles, Pedro Cortez	11/9/10	Kings	Kings	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Van Pelt, James Glenn	7/12/02	Riverside	Riverside	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	No
Vang, Ronnie	4/25/14	Sacramento	Sacramento	"Asian" source: " 4) Probation report"	A	Yes
Vargas, Eduardo David	10/4/01	Orange	Orange	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Varner, Scott Paul	4/15/10	Shasta	Shasta	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)"	B	Yes
Victorianne, Javier William	3/28/08	Riverside	Riverside	"Black or African American" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	B	Yes
Vieira, Richard John	3/30/92	Stanislaus	Stanislaus	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Villa, Ricardo	8/16/11	Ventura	Ventura	"Hispanic" source: " 3) CDCR materials (Condemned inmate list)" " 4) Probation report"	L	Yes
Villanueva, Rigoberto	10/4/19	Riverside	Riverside	"Hispanic" source: " 4) Probation report"	L	Yes
Vines, Sean Venyette	11/7/97	Sacramento	Sacramento	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Visciotti, John Louis	10/21/83	Orange	Orange	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	Yes
Vo, Loi Tan	10/18/95	Santa Clara	Santa Clara	"Other" source: " 4) CDCR materials (Condemned inmate list)"	O	Yes
Volarvich, Brendt Anthony	6/12/08	Yolo	Yolo	"White" source: "Other: News articles"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Wade, Anthony Darnell	11/12/13	Orange	Orange	"Black or African American" source: "4) Probation report"	B	Yes
Wade, Melvin Meffery	5/21/82	San Bernardino	San Bernardino	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Waldon, Billy Ray	2/28/92	San Diego	San Diego	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Walker, Marvin Pete, Jr.	9/8/80	Santa Clara	Santa Clara	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Walker, Thomas Edwin	5/12/92	Unknown	Alameda	"White" source: "2) Inmate's death certificate"	W	No
Wall, Randall Clark	1/30/95	San Diego	San Diego	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Wallace, Keone	5/27/93	Fresno	Fresno	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Walters, Michael J.	6/25/13	Kings	Kings	"Hispanic" source: "3) CDCR materials (Condemned inmate list)"	L	Yes
Wash, Jeffrey D.	9/1/87	Alameda	Alameda	"White" source: "2) Inmate's death certificate"	W	No
Washington, Darnell Keith	1/13/17	Unknown	Contra Costa	"Unknown" source:	Unknown	Yes
Watta, Benjamin Wayne	1/20/09	Orange	Orange	"Hispanic" source: "3) Probation report" "4) CDCR materials (Condemned inmate list)"	L	Yes
Weatherton, Fred Lewis	4/30/02	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Weaver, La Twon Regenial	5/28/93	San Diego	San Diego	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Weaver, Ward Francis, Jr.	4/11/85	Kern	Kern	"White" source: "1) Inmate's birth certificate" "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Webb, Dennis Duane	8/15/88	San Luis Obispo	San Luis Obispo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Webster, Larry Junior	6/9/83	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Welch, David Esco	7/25/89	Alameda	Alameda	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Wesson, Marcus Delon	7/27/05	Fresno	Fresno	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
West, Erran Lane	7/18/14	Unknown	Kern	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Westerfield, David Alan	1/6/03	San Diego	San Diego	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Whalen, Daniel Lee	6/24/96	Stanislaus	Stanislaus	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Wharton, George Herbert	7/22/87	Santa Barbara	Santa Barbara	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	No
Whisenhunt, Michael McCrea	10/21/96	San Luis Obispo	San Luis Obispo	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Whiteside, Gregory C.	11/5/10	San Bernardino	San Bernardino	"Black or African American" source: "4) Probation report"	B	Yes
Whitt, Charles Edward	5/26/81	San Bernardino	San Bernardino	"White" source: "3) CDCR materials (Condemned inmate list)"	W	No
Williams, Bob Russell, Jr.	9/20/96	Kern	Kern	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Williams, Corey Leigh	11/15/00	Contra Costa	Contra Costa	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Williams, Darnell, Jr.	9/21/16	Alameda	Alameda	"Black or African American" source: "4) Probation report"	B	Yes
Williams, Dexter Winfred	2/28/96	Fresno	Fresno	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Williams, George	2/24/05	San Diego	San Diego	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Williams, Jack Emmit	8/24/98	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Williams, Keith Daniel	4/13/79	Merced	Merced	"White" source: "Other: CAP, CDCR materials (Inmates executed)"	W	No
Williams, Kenneth Derrell	5/14/82	Placer	Placer	"Unknown" source: "3) CDCR materials (Condemned inmate list)"	Unknown	No
Williams, Michael Allen	4/1/83	San Diego	San Diego	"Unknown" source: "4) CDCR materials (Condemned inmate list)"	Unknown	No
Williams, Robert Lee	8/29/03	Riverside	Riverside	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Wilson, Brandon H.	11/4/99	San Diego	San Diego	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	No
Wilson, Javance Mickey	8/27/03	San Bernardino	San Bernardino	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes
Wilson, Lester Harland	6/29/00	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Winbush, Grayland	7/11/03	Alameda	Alameda	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	Yes
Woodruff, Steve	4/17/03	Riverside	Riverside	"Black or African American" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	B	No
Wozniak, Daniel Patrick	9/23/16	Orange	Orange	"White" source: "4) Probation report"	W	Yes
Wrest, Theodore John	5/18/88	Santa Barbara	Santa Barbara	"White" source: "4) CDCR materials (Condemned inmate list)"	W	Yes
Wycoff, Edward Matthew	12/8/09	Contra Costa	Contra Costa	"White" source: "3) CDCR materials (Condemned inmate list)" "4) Probation report"	W	Yes
Yeoman, Ralph Michael	7/10/90	Sacramento	Sacramento	"White" source: "4) CDCR materials (Condemned inmate list)"	W	No
Yonko, Tony Ricky	9/28/09	Riverside	Riverside	"White" source: "3) CDCR materials (Condemned inmate list)"	W	Yes
Young, Caroline M.	10/27/95	Alameda	Alameda	"Other" source: "3) CDCR materials (Condemned inmate list)"	O	No
Young, Donald Ray	4/19/06	Tulare	Tulare	"Black or African American" source: "4) CDCR materials (Condemned inmate list)"	B	Yes

Non-Los Angeles Death Judgments

Name	Date of death judgment	Charging county	Trial county	Race with Source	Race without Source	Currently under sentence of death in CA? (Y/N)
Young, Jeffrey Scott	11/30/06	San Diego	San Diego	"White" source: " 4) CDCR materials (Condemned inmate list)"	W	No
Young, Robert	12/17/90	Alameda	Alameda	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	No
Young, Timothy James	4/19/06	Tulare	Tulare	"Black or African American" source: " 4) CDCR materials (Condemned inmate list)"	B	Yes
Zambrano, Enrique	9/8/93	Alameda	Alameda	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Zanon, David Charles	12/13/10	El Dorado	El Dorado	"White" source: " 3) CDCR materials (Condemned inmate list)"	W	Yes
Zapien, Conrad Jess	3/23/87	Santa Barbara	Santa Barbara	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	Yes
Zaragoza, Louis Rangel	5/22/01	San Joaquin	San Joaquin	"Hispanic" source: " 4) CDCR materials (Condemned inmate list)"	L	No
Zavala, Francisco Roy, Jr.	12/4/15	Riverside	Riverside	"Hispanic" source: " 4) Probation report"	L	Yes
Rodriguez, Hernan	6/26/20	Tulare	Tulare	"Hispanic" source: " 4) Probation report"	L	Yes
Marples, Vincent James	6/26/20	Riverside	Riverside	"White" source: " 4) Probation report"	W	Yes

Non-Los Angeles Death Judgments

All (whether or not under a sentence of death)

Race	Number	Percentage of Total
W	300	42.37%
B	189	26.69%
A	8	1.13%
L	139	19.63%
O	28	3.95%
Unknown	44	6.21%
Total	708	

Percentage of non-white capital-sentenced persons in counties other than LA (with unknowns excluded from total):

54.82%

Currently under a sentence of death

Race	Number	Percentage of Total
W	199	41.03%
B	142	29.28%
A	5	1.03%
L	111	22.89%
O	22	4.54%
Unknown	6	1.24%
Total	485	

Percentage of non-white capital-sentenced persons in counties other than LA:

58.97%

ATTACHMENT B

ILLUSTRATIVE SOCIAL SCIENCE FINDINGS ON ISSUES PERTAINING TO RACE AND THE DEATH PENALTY

More Whites than African Americans consistently support capital punishment: Mona Lynch & Craig Haney, *Death Qualification in Black and White: Racialized Decision Making and Death-Qualified Juries*, 40 L. & Pol'y 148, 153, 157 (2018) (finding that, among respondents to a Solano County 2014 survey of jury-eligible individuals who were either in favor of or opposed to the death penalty, 70% of White respondents favored the death penalty, compared to only 45% of African-American respondents; in a 2016 Solano County survey, 66% of White respondents expressed support compared to 27% of Black respondents); J. Baxter Oliphant, *Public Support for the Death Penalty Ticks up*, Pew Rsch. Ctr. (June 11, 2018), <https://www.pewresearch.org/fact-tank/2018/06/11/us-support-for-death-penalty-ticks-up-2018/> (finding 59% of Whites support the death penalty, as compared to 36% of African Americans); James Unnever et al., *Race, Racism, and Support for Capital Punishment*, 37 Crime & Just. 45, 54 (2008) (finding that, over a thirty-year period, "African Americans are substantively less likely than Whites to support the death penalty," e.g., 39.9% of Black respondents compared to 69.8% of White respondents in 1974, and 41.7% of Black respondents compared to 72.5% of White respondents in 2004); John K. Cochran & Mitchell B. Chamlin, *The Enduring Racial Divide in Death Penalty Support*,

34 J. Crim. Just. 85, 85 (2006) (noting that White respondents’ significantly greater support for capital punishment as compared to Black respondents “was so robust that it was observed in virtually every public opinion poll and social scientific survey undertaken within this country over the past fifty years”); Lawrence D. Bobo & Devon Johnson, *A Taste for Punishment: Black and White Americans’ Views on the Death Penalty and the War on Drugs*, 1 Du Bois Rev.: Soc. Sci. Rsch. on Race 151, 159-60, 160 tbl.1 (2004) (finding 86% support for the death penalty among White respondents and 53% support among Black respondents); Phoebe C. Ellsworth & Samuel R. Gross, *Hardening of the Attitudes: Americans’ Views on the Death Penalty*, 50 J. Soc. Issues 19, 19, 21 (1994) (confirming that when published “support for the death penalty [w]as at a near record high,” and that “[t]hroughout the entire period for which poll data are available, . . . Whites have favored it more than Blacks”).

Based upon their opposition to capital punishment, African Americans are significantly more likely than Whites to be excluded from capital juries through death qualification: Lynch & Haney, *Death Qualification in Black and White*, *supra*, at 150-51 (citing research); *id.* at 159, tbl.4 (describing the results of two Solano County surveys (one in 2014 and another in 2016), and finding that, in the first survey, about eight out of 10 African-American respondents who were deemed excludable were disqualified because of their opposition to the death penalty, and in the second survey, that number rose to nearly nine out of 10, but that, in comparison, Whites in both surveys were excluded at almost equal rates because of strong

opposition or support for the death penalty); Ann Eisenberg, *Removal of Women and African-Americans in Jury Selection in South Carolina Capital Cases, 1997-2012*, 9 Ne. U. L.J. 299, 333–34, 333 tbl.3, 342 (2017) (finding in a study of trial transcripts in South Carolina trials that resulted in a death sentence that “a majority of those black individuals removed for cause were excused because of their opposition to the death penalty”— “58% of blacks removed for cause and 32% of the overall black venire group”—in comparison to whites who were removed for cause based upon death-penalty opposition—“25% of whites removed for cause and eight percent of the overall white venire group”); *id.* at 336 tbl.6 (finding that fully 97% of Black veniremembers were removed for their opposition to the death penalty, whereas only 53% of White veniremembers were excluded based upon anti-death penalty views); Aliza Plener Cover, *The Eighth Amendment’s Lost Jurors: Jurors: Death Qualification and Evolving Standards of Decency*, 92 Ind. L.J. 113, 137 (2016) (finding in a study of Louisiana capital trials conducted between 2009 and 2013 using the *Witherspoon* standard that across all the surveyed trials, Black people were excluded an average of 36.0% percent whereas White people were excluded an average of 20.0%; “[c]onsequently, black jurors were 1.8 times more likely to be struck under *Witherspoon* than white jurors”); Justin D. Levinson et al., *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. Rev. 513, 553, 558 (2014) (finding in a study of 445 jury-eligible citizens from six leading death penalty states that “death qualification leads to more male and White juries”); *id.* at

558 (finding also that “[W]hite participants were significantly more likely to be death-qualified (83.2%) than non-White participants (64.3%)”); Alicia Summers et al., *Death Qualification as Systematic Exclusion of Jurors with Certain Religious and Other Characteristics*, 40 J. Applied Soc. Psych. 3218, 3224-25, 3228 (2010) (finding in a study applying the *Witt* standard to mock jurors that “racial minority members were more than twice as likely as were White mock jurors to be excluded by the death-qualification item”); Craig Haney et al., “*Modern*” *Death Qualification: New Data on Its Biasing Effects*, 18 L. & Hum. Behav. 619, 630 (1994) (finding in a survey of adult California residents that with a sample approximating the racial composition of jury pools—18.5% were racial minorities—26.3% of the group excluded by death qualification were racial minorities, “so that death qualification (even when it included strong death penalty proponents) resulted in the loss of 27.1% of [the] minority respondents”); Rick Seltzer et al., *The Effect of Death Qualification on the Propensity of Jurors to Convict: The Maryland Example*, 29 How. L.J. 571, 573, 604 (1986) (finding a 1983 Maryland public opinion survey that 34.1% of black respondents would be disqualified through death qualification, compared to 9.5% of white study participants); Robert Fitzgerald & Phoebe C. Ellsworth, *Due Process vs. Crime Control: Death Qualification and Jury Attitudes*, 8 L. & Hum. Behav. 31, 46 (1984) (finding that “[b]lack are more likely than other racial groups to be excluded under *Witherspoon* (25.5% vs. 16.5%)”); Joseph E. Jacoby & Raymond Paternoster, *Sentencing Disparity and Jury Packing: Further Challenges to the Death Penalty*, 73 J.

Crim. L. & Criminology 379, 386 (1982) (finding that 55.2% of black respondents were “*Witherspoon*-excludable” compared to 20.7 % of white respondents).

Death qualified juries are biased in favor of a death sentence in that a disturbingly significant percentage of these jurors do not understand penalty phase instructions, do not follow the law, and are motivated to vote for death based on erroneous beliefs about the death penalty and/or life in prison without possibility of parole:

Mona Lynch & Craig Haney, *Capital Jury Deliberation: Effects on Death Sentencing, Comprehension, and Discrimination*, 33 L. & Hum. Behav. 481, 486 (2009) (finding in a mock jury study of jury-eligible, death-qualified Californians that among those who voted for death, “between 14% and 30% , depending upon the specific mitigating factor[,] actually weighed mitigating evidence as favoring a death sentence”); William J. Bowers et al., *Foreclosed Impartiality in Capital Sentencing: Jurors’ Predispositions, Guilt-Trial Experience, and Premature Decision-Making*, 83 Cornell L. Rev. 1476, 1492 (1998) (finding in a study involving data from 916 capital jurors in 11 states, that “[n]early four out of five jurors” who expressed an early pro-death stance at the guilt phase held fast to that position until the final penalty vote); Craig Haney & Mona Lynch, *Comprehending Life and Death Matters: A Preliminary Study of California’s Capital Penalty Instructions*, 18 L. & Hum. Behav. 411, 420 (1994) (finding “a widespread inability to comprehend the central terms of capital penalty phase decision making, and that there was far more confusion attached to the concept of mitigation than

aggravation”); Craig Haney & Mona Lynch, *Clarifying Life and Death Matters: An Analysis of Instructional Comprehension and Penalty Phase Closing Arguments*, 21 L. & Hum. Behav. 575, 575–77, 581–82 (1997) (finding that mock jurors misunderstood the weighing portion of judicial instructions in a pattern that biased them toward death); William J. Bowers & Benjamin D. Steiner, *Death by Default: An Empirical Demonstration of False and Forced Choices in Capital Sentencing*, 77 Tex. L. Rev. 605, 650 (1995) (finding in a study of data from capital juror interviews, including California capital jurors that only 36.2% correctly understood that in California, LWOP is the only alternative punishment, and only half of those who stated that “life” is the alternative punishment understood that “life” means there is no parole).

African Americans and Whites differ in their views about mitigating and aggravating evidence, with African Americans significantly more receptive to mitigating evidence than Whites: Lynch & Haney, *Death Qualification in Black & White*, *supra*, at 152 (listing studies); Mona Lynch & Craig Haney, *Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the “Empathic Divide,”* 45 L. & Soc’y Rev. 69, 91 (2011) (conducting a mock jury study, and finding that White male jurors “diverged significantly” from other jurors “both in terms of how they constructed the defendant’s blameworthiness and motivation, and on whether they believed he deserved to be allowed to continue to live”); Mona Lynch & Craig Haney, *Capital Jury Deliberation*, *supra*, at 494 (finding that “there were striking differences in how all of the mitigating

evidence and some of the aggravating evidence were evaluated by [the] White male jurors, as a function of the defendant's race");¹¹³ Mark Peffley & Jon Hurwitz, *Persuasion and Resistance: Race and the Death Penalty in America*, 51 Am. J. Pol. Sci. 996, 1007 (2007) (finding that "[w]hen confronted with the argument that the death penalty is racially unfair, whites who believe that black crime is due more to blacks' dispositions than to a biased justice system end up rejecting the racial argument with such force that they become even more supportive of the death penalty"); William J. Bowers et al., *Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant Is Black and the Victim Is White*, 53 DePaul L. Rev. 1497, 1513 (2004) (studying capital jurors in Black-defendant/White-victim cases, finding that "black and white males differ substantially, not only with respect to strong aggravating and mitigating considerations, such as dangerousness, remorse, and lingering doubt, but also in the ways they see the crime (i.e., vicious versus

¹¹³ In a related vein, mock juror research finds that whites view Latino defendants of low socio-economic status [SES] as more deserving of death sentences, and that "European American jurors reacted differently to mitigating factors, depending on the defendant's ethnicity and SES. The combination of weak mitigation and a low SES Latino defendant had a negative influence on European American jurors' decisions [relative to the decisions in high SES Latino defendant conditions, and all white defendant conditions] while strong mitigating factors provided a benefit for the high SES European American defendant, but not for the Latino defendant in either SES condition." Russ K. E. Espinoza & Cynthia Willis-Esqueda, *The Influence of Mitigation Evidence, Ethnicity, and SES on Death Penalty Decisions by European American and Latino Venire Persons*, 21 Cultural Diversity & Ethnic Minority Psych. 288, 294-95 (2015).

not cold-blooded) and in the degree to which they personalize the defendant and identify with him and his family”); *id.* at 1515 (finding overall that “[w]hite jurors are much less receptive to mitigation than their black counterparts” in black-defendant/white-victim cases); Thomas W. Brewer, *Race and Jurors’ Receptivity to Mitigation in Capital Cases: The Effect of Jurors’, Defendants’, and Victims’ Race in Combination*, 28 L. & Hum. Behav. 529, 539 (2004) (finding that “Black jurors ... are significantly more receptive to mitigation than their White counterparts”); William J. Bowers et al., *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors’ Race and Jury Racial Composition*, 3 U. Pa. J. Const. L. 171, 189, 207 (2001) (studying capital jurors in various defendant-victim racial combinations, finding that Black jurors in Black-defendant/White-victim cases were “far and away the most likely to have lingering doubts and to regard such doubts as important in making the punishment decision”); *id.* at 222 (finding that “the defendant’s ‘dangerousness’ was the watchword of white jurors [and] [m]ore white jurors than black jurors saw the defendant as ‘dangerous’ in [Black-defendant/White-victim] cases by about twenty percentage points”); Stephen P. Garvey, *The Emotional Economy of Capital Sentencing*, 75 N.Y.U. L. Rev. 26, 46-47 (2000) (finding in a study of capital jurors, that Black jurors are more likely than White jurors to differentiate between the crime and the defendant when deciding penalty).

CERTIFICATE OF COUNSEL

I, ELISABETH SEMEL, am a member of the Berkeley Law faculty, Director of the Berkeley Law Death Penalty Clinic, and counsel for the Honorable Gavin Newsom in this amicus curiae brief. I directed Heather Canfield, the Death Penalty Clinic Paralegal, to conduct a word count of this brief using the software on the computer on which she formatted this brief. On the basis of that computer-generated word count, including footnotes, but not including the caption, table of contents, table of authorities, application, signature blocks, attachments, and this certification, I certify that this brief is 13,889 words in length.

Dated: October 26, 2020

/s/ Elisabeth Semel
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Attorney for *Amicus Curiae*
GOVERNOR GAVIN NEWSOM

DECLARATION OF SERVICE

Case Name: ***People v. Don'te McDaniel***
Case Number: **Cal. Supreme Court No. S171393**
Los Angeles County
Superior Court No. TA074274

I, Heather Canfield, declare as follows: I am over the age of 18, not a party to this cause. I am employed in the county where the mailing took place. My business address is 353.g Law Building, U.C. Berkeley School of Law, Berkeley, CA 94720-7200. I served a true copy of the following documents:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY THE HONORABLE GAVIN NEWSOM

PROPOSED BRIEF OF *AMICUS CURIAE* THE HONORABLE GAVIN NEWSOM IN SUPPORT OF DEFENDANT AND APPELLANT MCDANIEL

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In addition, at the request of the Los Angeles Superior Court the following was sent a courtesy copy of the document(s) via United States Postal Service on **October 26, 2020**:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **October 26, 2020**, at Oakland, California.

/s/ Heather Canfield
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